

## ABSTRACT

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THE IMPACT OF CONSTITUENT ASSEMBLIES (1978-1995) ON NIGERIAN

CONSTITUTIONS AND POLITICAL EVOLUTION

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This dissertation addresses the issues of crafting a constitution for Nigeria that would meet the criteria of being visible, sustainable, and durable for national political unity, social and economic development. Specifically, it focuses on the years 1978 – 1995 during which several high profile systematic, constitution crafting exercises were undertaken. These included the establishment of a Constitution Drafting Committee to craft a constitution, and a Constituent Assembly.

Ultimately, these exercises have proven to be only partially successful. The goal of producing an enduring constitutional framework for Nigerian politics remains elusive.

The two core questions pursued in this dissertation focus on:

Why did the military pursue these constitution crafting activities?

What are the pressing political issues that the constitutional framework will have to manage?

The dissertation pursued these issues through surveys, interviews, a review of government documents and reports, participant observation, and a review of existing

literature regarding constitution development, federalism and Nigerian history and politics.

Key research findings uncovered pressing political concerns ranging across ethnic fears, gender and youth concern, institutional restructuring and economic subordination. Our findings also related to the elite background of participants in these constitutional exercises, and the intrusion of religion, class, and geographical interests into the deliberations of the assemblies. The continued violation of constitutional provisions by the military was highlighted. The widespread call for a Sovereign National Constitutional Conference to shape a new popular constitution for the country was also a prominent concern.

Key recommendations focus on the need for a national constitutional conference free of political interference and constricting mandates.

THE IMPACT OF CONSTITUENT ASSEMBLIES (1978-1995) ON  
NIGERIAN CONSTITUTIONS AND POLITICAL EVOLUTION

A DISSERTATION

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BY

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## LIST OF ABBREVIATIONS

ABN	Association for Better Nigeria
AFRC	Armed Forces Ruling Council
ANPP	All Nigeria Peoples Party
CA	Constituent Assembly
CAN	Christian Association of Nigeria
CC	Constitutional Conference
CDC	Constitution Drafting Committee
CLO	Civil Liberty Organisation
CRC	Constitution Review Committee
FCT	Federal Capital Territory
FEDECO	Federal Electoral Commission
FMG	Federal Military Government
IMF	International Monetary Fund
MAMSER	Mass Mobilization and Social Economic Recovery
NCC	National Constitutional Conference
NCNC	National Council of Nigeria and the Cameroons
NDSC	National Defence and Security Council
NEC	National Electoral Commission
NNA	Nigerian National Alliance

NPC	Northern Peoples Congress
NPN	National Party of Nigeria
NPP	Nigerian Peoples Party
NRC	National Republican Convention
OIC	Organisation of Islam Conference
PDP	Peoples Democratic Party
PFN	Patriotic Front of Nigeria
PRP	Peoples Redemption Party
PSP	Peoples Solidarity Party
RPB	Report of the Political Bureau
SAN	Senior Advocate of Nigeria
SAP	Structural Adjustment Programme
SDP	Social Democratic Party
UPGA	United Peoples Grand Alliance
UPN	United Party of Nigeria

## CHAPTER I

### INTRODUCTION

#### *Statement of the Problem*

The territory now known as Nigeria was christened in an article in *The Times* of London on January 8, 1897 by Miss Flora Shaw, who later became the wife of Lord Lugard, the then British Governor of the territory. Nigeria became amalgamated in the year 1914 (North and South). On January 15, 1955, James Wilson Robertson became the British Governor General of Nigeria, representing the British Monarch (Queen Elizabeth II), the then Head of State. Robertson was in power until November 16, 1960 and so was the last British Governor General of Nigeria before independence.

As a British Colony, Nigeria yearned for independence. “The concern for this independence necessitated the 1958 constitutional conference, which discussed the independence constitution.”<sup>1</sup> The 1958 constitution enshrined a list of Fundamental Rights to protect Nigeria from arbitrary use of power by government or its agents or organs. It was settled that Nigeria should be independent on October 1, 1960. Agreement was also reached on critical issues like revenue allocation, creation of new regions, boundary adjustments and amendments to the constitution. The first five years of Nigeria’s independence, 1960 – 1965, covered the third phase of constitution making in Nigeria. The first and second phases were under colonial rule.

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<sup>1</sup>Vivian Roli Mottah-Migon, *Constitution Making in Post-Independence Nigeria: A Critique* (Ibadan, Nigeria: Spectrum Books Ltd., 1994), 65.

This dissertation will attempt to identify the problems that have militated against the work of the various bodies established with the aim of giving Nigeria an enduring constitution and advancing her political evolution. These bodies included two Constitutional Review Committees (CRCs), two Constitution Drafting Committees (CDCs), and two Constituent Assemblies (CAs). What political events prompted the formation of these constitution crafting bodies? How were the members of these bodies selected? What was the socioeconomic profile of these members? What were the mandates of these bodies? How free were they to pursue their mandates? What were the outputs and impacts of their activities? A related set of questions focuses on the character and substance of past and present Nigerian constitutions, and the central political issues that any viable and durable constitution for Nigeria must address.

This dissertation pursues these questions by exploring the political contexts and outcomes of constitution crafting bodies in Nigeria during the period 1976 to 1995. During this period Nigeria produced 3 separate constitutions – 1979, 1988, and 1995. Yet the search for a constitutional framework continues. The motivation for exploring this frenetic period of constitution crafting in Nigeria emanates from our concern to understand the key challenges involved in fashioning a viable and durable constitution for Nigeria as a key component for promoting political stability and, thereby, advancing the political evolution of Nigeria.

### *Historical Background: Constitutions and Politics in Nigeria*

A Constitutional Conference was convened in 1960, which had before it, the draft of the Independence Constitution. Under this constitution, a federal system of

government was established, with the regions, which included Northern, Eastern and Western regions, as Federating Units. Provisions were entrenched to safeguard important constitutional provisions, such as those relating to federal framework, fundamental rights and revenue allocations. Despite these improvements, the executive authority of the Federation as in the region was vested in Her Majesty, the Queen of the United Kingdom.

“The Republican Constitution of 1963 was established to abrogate the remaining colonial vestiges in the Independence Constitution.”<sup>2</sup> Nigeria then clamored for a republican status. In July 1963, a Constitution Review Conference was held in Lagos with a provision that Nigeria should attain republican status.

The 1963 Constitution provided for a president as the head of state, while in the regions, the administration was headed by governors. The Supreme Court of Nigeria became the highest court of appeal. It was decided that Nigeria should have a republican constitution and form of government, so that the Queen of England would cease to be the Nigerian Head of State and cease to sign bills into laws. Also the Privy Council in London would cease to be the highest court of appeal for Nigeria.<sup>3</sup> These decisions led to the making of the Republican Constitution of 1963 and it gave Nigeria the first indigenous head of state, Dr. Nnamdi Azikiwe.

Nigeria operated the 1963 Constitution until the outbreak of Nigerian Civil War in 1967. General Yakubu Gowon was in power until the end of the civil war on January

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<sup>2</sup>*Report of the Constitutional Conference 1994/1995, Volume II* (Abuja, Nigeria : The Conference, 1995), 44.

<sup>3</sup>*Ibid.*, 44 – 45.



15, 1970. He was toppled in a coup d'état by General Murtala Muhammed. There then arose the need for a post-war constitution for Nigeria. This need gave rise to the setting up of a Constitution Review Committee in 1976, followed by the Constituent Assembly 1978.

In 1964, the first general election since Nigeria's independence and republican status was held. The election was fraught with unprecedented rigging and rioting. The elections in the Western Region, held in November 1965, created a political crisis in the country and the military took advantage of the crisis, seized power, and imposed military rule in the country from January 15, 1966 to September 30, 1979.

General Aguiyi Ironsi, an Ibo man, seized power on January 16, 1966 and promised to produce a new constitution for Nigeria. He set up another Constitution Review Commission to draft a new constitution. However his government was overthrown in a counter coup. General Yakubu Gowon, a member of one of the Middle Belt "minority" ethnic groups, became the new head of state on August 1, 1966. Gowon in turn pledged a new constitution for Nigeria within two years. On July 29, 1975 Gowon's government was overthrown as General Murtala Mohammed, from the north, seized power. He began the transitional process to civilian rule by setting up the Constitution Drafting Committee in September 1975 to draft a new constitution. This Committee was under the Chairmanship of Chief F.R.A. Williams, a famous constitutional lawyer in Nigeria. General Murtala Mohammed was assassinated in an attempted coup led by Col. Bukar Dimka on February 13, 1976. General Obasanjo, the new Head of State, set up a Constituent Assembly of partly elected and partly appointed

members to deliberate on the Constitution Drafting Committee report. Justice Udo Udoma was the Chairman of the Assembly.

The Assembly submitted a revised constitution to the Federal Military Government on August 29, 1978 and was dissolved on September 30, 1978. Subsequently, elections were conducted from 7<sup>th</sup> July to 11<sup>th</sup> August 1979. Thereafter power was handed over at the federal level to Alhaji Shehu Shagari of the National Party of Nigeria (NPN) on October 1, 1979 when the Constitution of 1979 came into effect. The Second Republic became a reality.

The new constitution substituted the Parliamentary System of government with the Presidential System. Thus the Head of State was also the Head of Government and Commander in Chief of the Armed Forces. The State Executive Council was established for each State of the Federation to comprise the Governor, Deputy Governor and Commissioners. The civilian government of Alhaji Shehu Shagari was toppled on December 31, 1983. The Second Republic ended abruptly. The new military rule was headed by Major General Mohammadu Buhari also from the north. Buhari's government was overthrown in yet another coup led by Major General Ibrahim Babangida, from the middle belt, on August 27, 1985.

The Babangida Administration began the transition to civilian rule program that would lead to the emergence of constitutional government in 1993. The 1979 constitution was designed to usher in a new political order in the country. To this end a Constitution Review Committee (CRC) was set up in 1987 to examine the provisions of

the 1979 constitution and make some changes for the consideration of the Armed Forces Ruling Council of General Babangida.

At the end of the Committee's assignment, the government established the Constituent Assembly of 567 members – partly elected and partly appointed – to deliberate on the changes recommended by the Constitution Review Committee. It completed its assignment in 1988. There were not many fundamental changes to the 1979 Constitution except for the provision of a two party system, establishment of traditional rulers' council and conferment on the States the power to create local government development areas.

Parts of the 1989 Constitution were promulgated piecemeal, beginning with the Local Government (Basic Constitutional and Transitional Provisions) Decree No 15 1989. Under this decree local government councils were constituted. The State Government Basic Constitutional and Transitional Provisions, Decree No. 50 of 1991, which provided for the election of civilian governors and members of the Houses of Assembly was also instituted. The major provisions of the 1989 Constitution were:

- It provided for a two party instead of a multiparty system. This represented a major departure from the 1979 Constitution;
- Supremacy of the constitution was entrenched in the constitution;
- Fundamental human rights were entrenched in the new constitution e.g. right to life, liberty and property.

As a result of the constant shifts in the 1989 Transition Program, Nigeria clamored for a change. The people perceived injustice in major provisions like power

sharing, revenue allocation, as well as states and local government creation. That change came about. Babangida's regime was brought to an end and an Interim National Government of Earnest Shonekan (a Yoruba man) was established on August 26, 1993. Again, the military took power from Shonekan on November 17, 1993. General Sani Abacha became the new Head of State. He stated that his Government would convene a National Constitutional Conference by establishing the Constitutional Conference Commission by Decree No. 1 of 1994. He charged the Commission with the responsibility to:

- Organize a National Constitutional Conference
- Serve as the secretariat of the Constitutional Conference
- Locate documents and sample memoranda for submission to the Conference.

Elections were held on May 28, 1994 and 273 delegates each representing conference district were elected to the Constitutional Conference, while the Provisional Ruling Council nominated 96 others. In all there were 369 members of the conference. The author of this work was an elected member to the conference.

Objectives of the Conference included:

- Preservation of the unity and territorial integrity of the Nigerian State
- Promote good governance, accountability and probity in public affairs
- To proffer a new constitution, which shall be promulgated into law by the Provisional Ruling Council

Other issues raised by Head of State Abacha included the demands for more states and local governments. He stressed the need to balance the demands for the

creation of more states against their economic and wider implications. The demand for additional states and local governments was topmost in the member's agenda as opposed to the Conference agenda. However, some delegates noted that most existing states and local governments are only being encouraged by the selfish ambitions of those who aspire to rule and should therefore be ignored.<sup>4</sup>

The Abacha's regime went ahead and increased the states to thirty-six (36) with a Federal Capital Territory. Local Governments were beefed up from 369 to 774. The conference fell back to the provisions of the 1979 constitution, with some important innovations like president and governors were not to succeed themselves. They were therefore restricted to one term but could come back after their successor has served his/her one term.

### *Analytical and Conceptual Framework*

Since this work centers on constitution making in Nigeria, it is necessary to examine the meaning of a constitution. Briefly it is a body of rules ensuring fair play, thus making the government "responsible."<sup>5</sup> Bacon and Hobbes, Bodin and even Machiavelli claim that some sort of initiate force, reason, national law or enlightened self-interest would bring about what their opponents would embody in effective institutions: restraint upon the arbitrary exercise of government power.

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<sup>4</sup>Ibid., 53.

<sup>5</sup>Carl J. Friedrich, *Constitutional Government and Democracy* (New York: Ginn and Company, 1950), 425 – 448.

A constitution according to B. O. Nwabueze is a body of fundamental principles according to which a state is organized.<sup>6</sup> A body of authoritative rules prescribing how a governmental system will operate may be called its “constitutional system.”<sup>7</sup> A constitutional system includes all the authoritative rules or, for instance, the way in which the governmental system is supposed to operate. The form of these rules does not matter. Therefore, the details of governmental operations are not usually included.<sup>8</sup> In Nigeria, as in the U.S., more important legal rules relating to the constitutional system have been placed in a separate document. These rules form the fundamental law of the land. The constitutional provisions or rules cannot usually be amended as ordinary laws. In a descriptive sense, constitution is identical with the constitutional system. However, in a legal sense constitution means fundamental law and includes authoritative interpretations that have been made of the provisions of such a document. Aristotle has charged that the political theorist “must investigate four kinds of constitution:

- i. The ideal or absolute best conceivable without regard to the actual circumstances;
- ii. The best attainable in the circumstances that prevail;
- iii. Constitutions inferior to (i) and (ii), which evidently may be worth putting into practice and preserving, and

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<sup>6</sup>B. O. Nwabueze, *The Presidential Constitution of Nigeria* (London: Hurst and Company, 1982), 11.

<sup>7</sup>G. Lowell Field, *Governments in Modern Society* (New York: McGraw-Hill, 1951), 91 – 92.

<sup>8</sup>*Ibid.*, 92.

iv. An all purpose constitution which would guide all States.<sup>9</sup>

Political science as a discipline is a product of western scholarship and until recently, neither the imperative of public or foreign policy nor the availability of foundation grants has stimulated or encouraged researches in non-western systems. These are some of the reasons for the conceptual ethnocentric characteristics of contemporary political science.

Claude Ake points out that a core deficiency of western social science includes the fact that the bulk of western social science is to the study of order rather than change.<sup>10</sup> The assumption being western societies were the peak of social evolution and that in so far as other societies needed to change, the real question was how far they could be like the west. It is with this backdrop that this work embraces the notion of “dependency constitution,” grounded in an understanding of “dependency.”

“Dependency is a concept popularly used in Comparative Analysis of the Third World countries in Asia, Africa, and Latin America.”<sup>11</sup> Lenin used this theory in his analysis of capitalism as a manifestation of the struggle among the colonial powers for the economic and political division of the world:

In the words of Lenin:

Not only are there two main group of countries, those among colonies, and the colonies themselves, but also the diverse forms of dependent

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<sup>9</sup>Aristotle, *The Politics* (New York: Penguin Group, 1981), 235.

<sup>10</sup>Claude Ake, *A Political Economy of Africa* (London: Longman Group, 1981).

<sup>11</sup>Ronald H. Chilcote, *Theories of Comparative Politics: The Search for a Paradigm* (Boulder, CO: Westview Press, 1981), 296.

countries which, politically, are formally independent, but in fact are enmeshed in the net of financial and diplomatic dependency.<sup>12</sup>

The various classifications of dependency theory most often emphasize the economic factor of relationships. Dos Santos takes the following position:

By dependency we mean a situation in which the economy of certain countries is conditioned by the development and expansion of another economy to which the former is subjected. The relation of interdependence between two or more economies, and between these and world trade, assumes the form of dependence when some countries [the subordinate ones] can do this only as a reflection of that expansion, which can have either a positive or a negative effect on their immediate development.<sup>13</sup>

Cardoso examined three tendencies in the literature on dependency:

1. Autonomous national development that established itself in Brazil and elsewhere as a response to the prevailing belief that development would occur through the export of commodities or foreign investment.
2. Dependency incorporates an analysis of international capitalism in its, monopolistic phase. Prominent proponents of this idea are: Harry Magdoff, Paul Sweezy, Paul Baran, and Claude Ake.
3. "The structural process of dependence should be viewed historically in terms of class relations in an effort to analyze the internal contradictions in the light of international politics and economics."<sup>14</sup>

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<sup>12</sup>Lenin, quoted in *ibid.*, 296.

<sup>13</sup>Don Santos, quoted in *ibid.*, 296.

<sup>14</sup>Fernando Cardoso, quoted in *ibid.*, 297.



This is in agreement with Lenin's formulation on dependency, which emphasizes not only the economic but also the political factors. The political factors, which formed the basis of the section of this study on dependency, will now be further examined.

Claude Ake described this approach by western science as a weakness.

He went on:

One of the main weaknesses of mainstream western social science is its discouragement of dialectical thinking in relation to the ideological commitment of western social science to the justification and preservation of the existing social order. With this type of commitment, mainstream western social science has an in-built bias in favour of categories such as ... traditional and bureaucratic authority (Max Weber) ... democratic and totalitarian political systems which are discrete and in sharp contrast, and suggestive of good and bad. The categories connoting good are associated with the prevailing western society being justified; the need to justify by designating as good traps social science into drawing a very sharp distinction between the preferred category and others ... fixing the categories rigidly and minimizing the possibilities of change, for if the possibility of the preferred category changing for the better is allowed, it is admitted that the preferred category was imperfect in the first place. So we have come to have a social science ... which is inadequate for understanding a complex social world of subtle shades in which change is ubiquitous.<sup>15</sup>

This notion of dependency is addressed again later in this work in the context of dependency constitution.

### *Research Methods*

This study utilized the following research methods:

- i. Historical and document analysis
- ii. Survey research in Port Harcourt, two rural areas of Rivers State (Degema and Etche), Kano and Lagos.

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<sup>15</sup>Ake, *A Political Economy of Africa*, 3.

- a. Port Harcourt is a cosmopolitan city with different ethnic groups that constitute Nigeria. Port Harcourt is regarded as a mini Nigeria. It is the capital of a minority state, Rivers State.
- b. Kano is an historical ancient city of Northern Nigeria. It is also cosmopolitan and has many immigrants from neighboring African states. It is a conservative city that sometimes holds different political views from the rest of the North.
- c. Lagos has a cosmopolitan composition and our study there, will be a fine reflection on the views of the country. It is pertinent to note that the two Constituent Assemblies of 1978 and 1988 were hosted by Lagos, the then capital of Nigeria.

The survey questionnaire focused on the following factors that have militated against Nigeria's political evolution:

- i. The form of government most suitable for Nigeria – Parliamentary, Presidential, Triarchy or Military;
- ii. Political parties, elections and electoral processes;
- iii. Local government system in Nigeria;
- iv. The need for more local government areas in Nigeria;
- v. The creation of more States and minority questions;
- vi. Sharia;
- vii. And other related issues.

The respondents were classified into:

- i. The three major ethnic groups, Ibo, Yoruba and Hausa – Fulani;
- ii. The minority groups
- iii. Groups that have participated in any of the two Constituent Assemblies (1978, 1988 and 1994/95)
- iv. Age groups: 18 – 29, 30 – 40 and over 40.

The major sources of research data also included participant observation as an elected member from Rivers State of the Constitutional Conference 1994-1995. The study also uses direct observation particularly of the events touching on the transition to civilian rule program under the Babangida Administration.

A review of Nigeria Government Documents; these included:

- i. Report of the 1977 Constitution Drafting Committee;
- ii. Proceedings of the 1978 Constituent Assembly;
- iii. Report of the proceedings of the 1987 Constitution Review Committee;
- iv. Proceedings of the 1988 Constituent Assembly;
- v. Report of the Political Bureau March 1987;
- vi. The Dasuki Report on Local Government in Nigeria;
- vii. The 1979, 1989 and 1995 Constitutions;
- viii. Publications by the Directorate for Social Mobilization (MAMSER) e.g. manifestoes and constitutions of the National Republican Convention and the Social Democratic Party;
- ix. Transition to Civil Rule Report;
- x. A review of local Nigerian newspapers and news magazines;

- xi. The use of existing political science analyses of Nigerian politics during the study period.

### *Limitations of the Study*

This study spans over the period of military administration in Nigeria from 1975 to June 1993, the date Nigeria would have elected the civilian president to take over the reins of power from General Babangida. Babangida's administration however overstayed its periodization of transition programs. The final disengagement by the Armed Forces and the swearing in of the next civilian president was scheduled for August 27, 1993. The military did not, however, hand over power to an elected civilian administration until May 29, 1999.

### *Literature Review*

This section explores some recent notable contributions to the analysis of constitutions and constitutionalism in Africa. It also reviews literature on major political issues in Nigeria which any viable and durable constitution must address.

#### Constitutions and constitutionalism in Africa

A. N. Aniagolu in his book *The Making of the 1989 Constitution of Nigeria* wrote from his perspective as the Chair of Nigeria's 1988/89 Constituent Assembly. He provides important insights into the efforts of the 567 elected and nominated Nigerians to develop a new constitution for Nigeria. Among his central concerns, of what he terms

he beginnings of Nigeria's constitutional journey," are the Sharia imbroglio and the media coverage of the Constituent Assembly.<sup>16</sup>

J. Okuko Onyango, in his book *Constitutionalism in Africa* argues that while written constitutions in Africa are a feature of the twentieth century, constitutionalism in Africa, indeed Nigeria is a much older phenomenon. Constitutionalism is a process of political rules and obligations which bind both governors and the governed, both kings and ordinary citizens. Constitutionalism is of necessity a version of limited government. Having a constitution is not the same thing as having constitutionalism. Where the powers of the rulers were almost unlimited, constitutionalism atrophied.<sup>17</sup>

There has been a tendency for the drafters of African (say Nigerian) constitutions to ask themselves questions such as: How the Swiss handle this issue? What does the United States Constitution have to say about this process? What are the implications for the Westminster model of government? Hardly ever do the drafters of African constitutions ask themselves the following relevant questions: What kind process of conflict resolution (in the Nigerian context) did Azikiwe, Awolowo or the Sardauna of Sokoto have before colonization? How did pre-colonial Nigerian leaders treat land use and ownership? In colonial Africa what were the roles and rights of women? The problem of good governance in Nigeria or Africa is not simply of what kind of constitution we operate; it requires obedience to the criminal law of the land.

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<sup>16</sup>A. N. Aniagolu, *The Making of the 1989 Constitution of Nigeria* (Ibadan, Nigeria: Spectrum Books, 1993).

<sup>17</sup>Joseph Oloka-Onyango, *Constitutionalism in Africa: Creating Opportunities, Facing Challenges* (Kampala, Uganda: Fountain Press, 2001), 35.

Good governance is more than putting legal limits to the powers of the government; it also requires putting legal limits to the economic and commercial behavior of the elite.

John M. Mbaku and Julius O. Ihonvbere in their book *The Transition to Democratic Governance in Africa: The Continuing Struggle* argue that many Nigerians, especially historically deprived and marginalized (e.g. women, rural inhabitants, ethnic minorities and those forced to live on the urban periphery) believed that independence was an opportunity to rid themselves of not only the Europeans but also of some of their laws and institutions and then develop and adopt through the reform process, institutional arrangements based on their own values, aspirations, traditions and customs. The new dispensation so established was expected to enhance indigenous entrepreneurship and the creation of wealth that was needed to deal more effectively with mass poverty and deprivation.<sup>18</sup> A critical function of this arrangement that is controlled and directed by the people's elected representative would be to design and implement policies to improve the welfare of the people, the majority of whom had been neglected and marginalized by colonial "development" policies. The choice of political system confronted the immediate post-independence leaders (Azikiwe, Awolowo, Sardauna of Sokoto) in Nigeria. It was argued that the only viable way to bring together the many ethnic, religious and nationality groups to provide an environment for the rapid generation of the wealth needed to confront poverty was through implementation of unitary political systems with strong central governments.

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<sup>18</sup>John M. Mbaku and Julius O. Ihonvbere, *The Transition to Democratic Governance in Africa: The Continuing Struggle* (Westport, Conn.: Praeger, 2003), 2-4.

The rules adopted by Nigeria at independence lacked the legitimacy that comes from the ‘understanding and voluntary acceptance of the constitution by the people as a prescription for settling conflict within society.’ Although the Nigerian Constitution [and the Constitutions of: 1976, 1989, 1995, 1999] was legal it lacked legitimacy that usually comes from the understanding and voluntary acceptance of the constitution by the people as a prescription for settling conflict within society.<sup>19</sup>

The unending clamor for new constitution in Nigeria smacks of this reality. At the end of the Nigerian civil war January 15, 1970, Nigeria had ample opportunity to finally reconstruct the post colonial state and establish a more effective and locally focused dispensation. Nigeria missed the opportunity.

Mbaku and Ihonvbere continue their arguments regarding constitutions. A constitution has been defined “as a form of social contract among citizens defining the rules within which the society functions.”<sup>20</sup> The critical question is how to ensure that the constitution is process-led with a deliberate policy of involving all in society in a manner that would address those issues that are critical to a civil society. For this to become the core of the constitution-making agenda, it would require the massive collaboration of democratic forces, institutions and communities as part of a larger strategy for containing, dismantling and reconstructing the violent post-colonial state in Nigeria. “To be sure constitutions are just documents. But they are a special brand of documents. They represent the compact between the government and the governed. The process by which a constitutional document is drafted and adopted can largely determine its legal and or political legitimacy, national debates or extensive consultations and dialogs involving every community and constituency and then

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<sup>19</sup>Ibid., 110.

<sup>20</sup>Dennis C Mueller, quoted in *ibid.*, 124.

subjected to debate in a constitutionally elected national assembly or adopted through a referendum, such a constitution cannot move the democratic project forward and cannot be the basis for disengagement much less demilitarization. Indeed when much unpopular constitutions are overthrown, no constituency protests since they can hardly claim ownership of the document.”<sup>21</sup> The Nigerian experience attests to this assertion. The overthrow of any constitution is greeted with demands for yet another constitution that will satisfy the expectations of the Nigerian constituency.

Vivian Roli Mottoh-Migon in her book *Constitution Making in Post – Independence Nigeria: A Critique* focuses on and critically appraised the factors responsible for the frequent revision of Nigeria’s post-independence constitution. Migon maintains that a constitution should be an enduring document, which should not be subjected to frequent changes. She advocates the use of constitutional amendment to effect constitutional changes. In her book Migon considered the pre-independence constitutions and the dynamics of constitutional review in Nigeria. She particularly considered the conduct of constitution makers over selected issues. These issues included:

- i. Religion and the case of Sharia
- ii. Role of the Armed Forces
- iii. Revenue allocation
- iv. Local government as a third tier of government.<sup>22</sup>

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<sup>21</sup>Ibid., 196.

<sup>22</sup>Mottoh-Migon, *Constitution Making in Post-Independence in Nigeria*, 1-222.



## Core political issues in Nigeria

Regarding the core political issue of ethnicity and Nigerian politics, political scientist Okundiba Nnoli emphasized that ethnic loyalty was reinforced by the rewards accruing to an individual from the activities of commercial association.<sup>23</sup> Do Yorubas, Ibos, or Hausas consider themselves as Nigerians first or place their ethnicity before nationalism? How did politicians play ethnic sentiments to secure for themselves political powers? Ethnicity has remained an intractable problem in Nigeria and agitated the minds of members of the 1978, 1988 and 1994 Constituent Assemblies. Ethnicity is an update of tribalism which was popularized by colonial anthropologists. Tribalism occupied an important place in the racist ideology of colonialism. The colonialists began to categorize African linguistic groupings as tribes and to attribute to them differences in culture and ways of life. In a systematic manner they distorted the word “tribe” which Mamood Mamdani pointed out: “Possessed scientific content when it characterized those social formations that did not possess a state ...the communal, classless societies, as for example, the Germanic tribes”.<sup>24</sup> Mamdani asks: “What is it that makes 2 million Norwegians a people ... a few hundred thousand Icelanders a people, and 14 million Hausa – Fulani a tribe?”<sup>25</sup> He concludes there is one explanation. What the colonialists referred to as tribalism in Africa is empirically observable in the anti – Castillian activities of the Basques, Calatans and Galcians of

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<sup>23</sup>Okwudiba Nnoli, *Ethnic Politics in Nigeria* (Enugu: Four Dimensions Publishers, 1978), 140.

<sup>24</sup>Ibid.

<sup>25</sup>Quoted in *ibid*.

Spain, the Resurgence of Scottish, Welsh and Irish chauvinism in the United Kingdom ... racial violence in the United Kingdom and the United States; racial separatism in Yugoslavia.<sup>26</sup> However, ethnicity, not tribalism, is the concept associated with this common phenomenon outside Africa. Ethnicity is a more universal concept for understanding the phenomenon which colonial racism called tribalism.<sup>27</sup> Ethnicity is therefore more scientific than tribalism, in that the latter is not limited to space. Ethnicity is perceived as an “abstract mental construct”,<sup>28</sup> and its characteristic can be more objectively determined.<sup>29</sup>

Nnoli described ethnicity as a social phenomenon associated with interaction among members of different ethnic groups. Ethnic groups are social formations distinguished by the communal character of their boundaries. Such characteristics include language, culture or both.

Rotimi T. Suberu in his book *Ethnic Minority Conflicts and Governance in Nigeria* examined ethnic conflicts in using case studies of the campaigns for ecological rehabilitation and financial restitution by oil-bearing communities in Rivers State, Nigeria. The principal argument of Suberu is that ethnic conflicts could be traced back to the colonial incorporation of culturally unrelated African groups into a single state,

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<sup>26</sup>Nnoli, *Ethnic Politics in Nigeria*, 5-6.

<sup>27</sup>Ibid., 6.

<sup>28</sup>Ibid.

<sup>29</sup>Ibid.

contemporary federal revenue allocation policies, and political competition. This political competition results in the struggle of who gets what, how, and when.<sup>30</sup>

Ethnicity and ethnic based politics are closely related to what has become known as the “minority problem.” The minority problem in Nigeria is diverse in nature. The Fulanis of Northern Nigeria though a minority tribe dominate political powers in Nigeria. In what appears to be a demonstration of the classical elitist theory of democracy - which states that in every society a minority makes the major decisions - the Fulanis of Nigeria in fact occupy key political positions which enable them to influence policies that serve to enhance their hegemonic status. The origins of this pluralistic and elitist theory of democracy are in Plato, although two Italian political sociologists, Vilfredo Pareto and Gaetano Mosca elaborated on the theory.<sup>31</sup>

Political scientists generally allude to the pluralistic character of Anglo – American politics, which Nigeria readily borrowed. Pluralism holds that democracy is premised on diverse interests and its dispersion of power.

John Locke and Jeremy Bentham stress individual property rights and private initiative, while James Madison envisages conflicting interests in the struggle for power.<sup>32</sup> The struggle for power appears for the moment to have been decided by military might, not on the battlefield but in the political sphere. The masses pray for

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<sup>30</sup>Rotimi T. Suberu, *Ethnic Minority Conflicts and Governance in Nigeria* (Ibadan, Nigeria: Spectrum Books, 1996), 85.

<sup>31</sup>Chilcote, *Theory of Comparative Politics*, 350 – 351.

<sup>32</sup>Ibid., 350.

democracy, while the military readily promises to relinquish power at the drop of the hat.

Another major issue is that of political parties. The pre-eminence of political parties in the political process cannot be overemphasized. A political party may be defined as a voluntary organization of people of common interests, formed to solicit for votes with the ultimate aim of gaining and maintaining political power. Some scholars conceived of an ideal political party as a purely ideological group open only to those who shared the goals of founding members and identified their interests with the concept of the interests of the group. According to one such scholar, Robert Michels, the sole cause of deviation from party ideology was oligarchy. He pointed out that it was in the nature of oligarchy to sacrifice ideological purity to the methodical organization of the masses for electoral victory.<sup>33</sup> Political parties are also defined as voluntary organizations of people of common interests, formed to solicit votes with the ultimate aim of gaining political power.

In Nigeria as elsewhere, it would be argued that most of its political troubles stem from the spirit of factions which competing parties foster and promote. As noted earlier in this study, political parties divide along ethnic boundaries. In the Federalist Paper No. 10, Madison warned:

Complaints are everywhere heard from our most considered and virtuous citizens... that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided not according to the rule of justice and

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<sup>33</sup>Robert Michels, "Elites in Western Democracy," in *Elites in Western Democracy*, edited by Ivor Crewe, Vol. I of *British Political Sociological Book* (New York: John Wiley and Sons, 1974), 283.

the rights of the minority party, but by the superior force of an interested and overwhelming majority. These ills are as a result of the unsteadiness and injustice with which a faction's spirit has tainted our public administration.<sup>34</sup>

Madison used the term faction as a majority or minority of the whole, whose interest is adverse to the rights of other citizens or to the permanent or aggregate interests of the community. G. Lowell Field lent his support to the views expressed by Madison in the Federalist papers No. 10.<sup>35</sup>

This study will now reflect for a moment on cooperative party development in Europe. The conservative party in England was a party of the "haves," who preferred to leave things as they were and thus keep the status quo. The liberal party that challenged the conservatives formed an aggressive opposition to the conservative monarchical government in England. This occurred from 1680 to the mid 1880s, and on the Continent since the Napoleonic wars.<sup>36</sup> However, the liberal party's inability to cope with the challenges of industrialization made room for the more radical – social elements to emerge as an effective form of opposition. The continental liberals found themselves confronted with needs to neglect social reforms in their efforts to push forward the fight for a constitutional representative government. Consequently, those who believed that social reforms were more important, or at any rate more urgent than parliamentary government, began to organize new parties. Among these were the workers, labour, or socialist parties whose early aspirations culminated in the

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<sup>34</sup>Madison quoted in G. Lowell Field, *Government in Modern*, 289.

<sup>35</sup>Ibid.

<sup>36</sup>Friedrich, *Constitutional Government and Democracy*, 425-48.

Communist Manifesto.<sup>37</sup> The liberal parties of Germany and Italy were rend asunder by the explosives of modern nationalism and imperialism.<sup>38</sup>

It is generally believed that, almost from the foundation of the national government, there have been two major political parties in the U.S. Although their names have changed, there is some degree of continuity in the measures and composition of each party. One of them was the Federalist-Whig-Republican party, associated with the names of Hamilton, Webster, Lincoln, Coolidge. Its interests were centered on the industrial and financial sectors, and it alienated itself with big-time farmers in 1860. However, the chief source of its strength remained economic. The second part was the republican-democratic organization, with Jefferson, Jackson, and Bryan as its supporters. Its historic center of gravity was the agricultural interests of the country, although numerous importing merchants and urban mechanics were brought early into the fold.<sup>39</sup> Beard warned, "This explanation of our party division does not mean that all industrialists have been in one camp and all tillers of the other, but that the predominating interests have been capitalistic and agricultural, respectively."<sup>40</sup>

Generally speaking, the Hamilton-Webster combination supported high protective tariffs for American industries, centralized banking, and a sound currency based on the gold standard. In the main, however, the Jefferson-Jackson party was

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<sup>37</sup>Ibid., 428-29.

<sup>38</sup>Ibid., 438.

<sup>39</sup>Charles A. Beard, *The American Leviathan: The Republic in the Machine Age* (New York: Macmillan, 1930), 4-87.

<sup>40</sup>Ibid., 84.

aligned on the opposite side.<sup>41</sup> There have been changes over the years with shifts towards both sides, but the interests of those sides have not merged into one.

It can safely be concluded that party development in the western world was not overwhelmingly based on ethnic considerations (although nationalist parties in Spain, Northern Ireland, Belgium and the United Kingdom have to be taken into consideration here.) There are lessons here for Nigerian political parties.

Political parties are characterized by:

- a. Popular sovereignty by seeing to it that all elective offices are contested for. In the United States context where we have two major parties, political parties nominate candidates from judgeship to the Presidency. In Nigeria, Babangida tried to impose the two-party system on Nigeria, as mentioned earlier.
- b. Political equality is another feature of democracy that is safeguarded by political parties. Every citizen is free to belong to any party. In theory, therefore, everybody can contest for any position both in the party and nationwide elective posts. But in reality, big politics has been displaced by ethnic interest.
- c. Platforms of parties or party manifestoes come about as a result of consultations among the rank – and – file of parties. Party rules and regulations are always defined or arrived at after consultations. This is where according to Eldewelt a party differs from a formal organization. Rather than following strictly laid down procedures as in formal organizations, political parties depend on

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<sup>41</sup>Ibid., 85.

consultations, compromises and coalition formations to survive first as a party and to organize for election victory.

- d. Political parties ensure majority rule. In a democracy like the United States and hopefully in Nigeria, the party with a simple majority in most contested elections emerges victorious. This prevents dictatorship, guarantees accountability and ensures certainty.

Michael Parenti,<sup>42</sup> has questioned the notion of majority rule. He sees coalition between the two major parties in the U.S. as perpetuating minority, corporate interest hegemony.

The question of political party formation has exercised the minds of scholars.

Beard describes political party thus:

Realistically conceived, a party is a union of people bent on getting possession of the organization authorized by the constitution and employing its engines in making and enforcing laws which they hold to the just, expedient or useful to their interests.<sup>43</sup>

Political parties have seeds of factionalism in them. Corey and Abraham remind us that faction does not necessarily mean the minority; that it could be the majority.<sup>44</sup> This is another way of saying that the parts are not equal to the whole. What lessons are there for Nigeria to learn there from? We shall in a panoramic manner examine the use of political parties in countries such as the United States and Britain.

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<sup>42</sup>Michael Parenti, *Democracy for the Few* (London: St. Martins's Press, 1983).

<sup>43</sup>Charles A. Beard, *American Government and Politics* (London: The MacMillan Company, 1935), 68.

<sup>44</sup>J.A. Corry, *Elements of Democratic Government* (Oxford: Oxford University Press, 1946), 247.



Commenting on the “Forging of Federalism” Carl Swisher wrote:

A common hate can bring temporary unity and cooperation, but it offers no guarantee of survival of togetherness. Our pattern of federal relations was produced of a forging process; it was to be forged not merely by the transmitted experience of the Revolution but also in the crucible of continuing struggle after the adoption of the constitution, with the Supreme Court as one of the major instruments of the forging process.<sup>45</sup>

The American Civil War and the Second World War were the greatest crises in American history. According to Schlesinger Jr., Lincoln’s proclamation, executive orders and military regulations invaded fields previously the domain of legislative actions. All this took place without a declaration of war by Congress.<sup>46</sup> For Lincoln the law of necessity made otherwise unconstitutional acts constitutional.<sup>47</sup> However in Nigeria there was neither war nor threat of war to justify the setting aside of the constitution.

### *Summary*

This chapter in its historical perspective establishes that Nigerian leaders struggled with Great Britain to attain Independence. Colonial constitutions were not acceptable to Nigerians because they were not fashioned by Nigerians. The struggle against non-indigenous constitutions continued until Nigeria attained independence.

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<sup>45</sup>Carl Swisher, “The Supreme Court and the Forging of Federalism, 1789 – 1864,” *Nebraska Law Review* (December, 1960): 4.

<sup>46</sup>Arthur M. Schlesinger Jr., *The Imperial Presidency* (Boston: Houghton Mifflin Company, 1973), 42.

<sup>47</sup>*Ibid.*

Nigerian politicians followed the British colonial masters and gave themselves the 1960 constitution with the blessing of the British government of that time. The 1963 Republican Constitution was also acclaimed as Nigerian because it was drafted by Nigerians. However the military seized power and began the oft repeated process of tinkering with the constitution.

Critical political issues that Nigerian constitutions have sought to be address include:

- i. Creation of more states
- ii. Creation of more local governments
- iii. Revenue allocation
- iv. Resource control
- v. Land Use Act that vested land in the governors of states except for federal land
- vi. Ownership of offshore resources
- vii. Restructuring Nigeria – geopolitical zones
- viii. Constitution by the elected people of Nigeria
- ix. Minority issues
- x. Federal character

The following chapters of this work focus on the constitutional crafting attempts to deal with these issues as they affect:

- i. The demand for new home-grown constitution
- ii. The Constituent Assembly and the political evolution of Nigeria
- iii. Good governance of Nigeria

- iv. The disengagement of the military from Nigeria's politics and the return of civilian administration.

## CHAPTER II

### THE POLITICAL AND CONSTITUTIONAL SYSTEM

This chapter concerns itself with forms of government and representation, focusing centrally on Nigeria. The parliamentary and presidential systems were to be very attractive to Nigerians. Other systems like diarchy or triarchy were left out as viable alternatives for the Nigerian political and constitutional system. The 1978, 1988 and 1994 Constituent Assemblies discussed the issues of constitutional development, and, therefore dealt with confederalism, federalism, unique federalism and unitarism. The third tier of government was given a new lease on life by the Dasuki Commission's twenty-one man team that reviewed local government administration in Nigeria. Local governments were to generate great interest as units of political and developmental growth in Nigeria. The demand for their creation grew in leaps and bounds and stands now at 774 local government units.

#### *Constitutional Development in Nigeria: Practices and Proposals*

From the colonial era, Nigeria has experienced the parliamentary, presidential, and military forms of government. The military government often appoints civilians to cabinet positions or allows civilian governments in the second and third tiers of government. This arrangement is known as diarchy.

The Political Bureau<sup>1</sup> appointed by General Babangida stated that no other issue attracted greater attention among the generality of the Nigeria public than that of forms of government. The report of the Political Bureau states the following:

From the presentation received, the choices were limited to only two forms of government; namely, parliamentary and presidential. This is a repeat of the choices which Nigerians felt were open to them during the debate on the 1979 constitution. The differences between the two debates, however, lie in the fact that, in the 1970s, it had used or misused the parliamentary form of government. As some Nigerians put it, neither the 1963 nor the 1979 constitution failed us; it was the nebulous behavior of the operators that failed us.<sup>2</sup>

What, then, attracted Nigerians to the parliamentary and presidential systems of government? The main characteristics of both systems can be briefly outlined.

The parliamentary system was the first form of government Nigeria experimented with after independence in 1960. This lasted until the first military coup in 1966. In the parliamentary system of government there are three arms of government: the executive, the legislative, and the judiciary. They are not as distinct or separate as in the presidential system practiced in Nigeria from 1979 and the U.S. since 1787. Parliament is supreme. All laws passed by parliament are constitutional. Parliamentary systems could be unicameral or bicameral; federal or unitary.

Nigeria experienced a presidential form of government from 1979 to 1983 with Alhaji Shehu Shagari as president. Like the U.S., Nigeria then operated a federal constitution. Both countries operate governments with constitutionally delimited powers

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<sup>1</sup>*Report of the Political Bureau, March 1987* (Lagos, Nigeria: Federal Government Printer, 1987), 76.

<sup>2</sup>*Ibid.*

and responsibilities, unlike the British system where parliament can regulate all aspects of life. The first ten amendments in the U.S. constitution imposed limitations on the power of congress. “Due process,” the Fifth Amendment, is one of the most well known by American citizens. It forbids the federal government, and the fourteenth Amendment forbids the states, to deprive anyone of life, liberty, or property without due process of law.

The separation of powers is covered in the first three articles of the U.S. constitution. They assign legislative, executive, and judicial powers (without defining them) to the three arms of government. Nigeria has her equivalent of the Bill of Rights, called Fundamental Human Rights.<sup>3</sup>

#### *Diarchy or Triarchy*

The concerns over the issue of “diarchy” and “triarchy” in Nigeria can also be briefly elaborated. The proponents of diarchy, including former president Dr. Nnamdi Azikiwe, take the position that the Nigerian military is not apolitical. Indeed, from 1966 to 1995 the military held political power for twenty-two years.<sup>4</sup> The case for military intervention in politics is decidedly political. It would, therefore, be unrealistic to exclude the military from exercising some executive responsibility in future government arrangements. Those in favor of triarchy point to the fact that traditional rulers are not only the unquestionable leaders of their people, they constitute the unifying force, and consequently provide the necessary stability in government.

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<sup>3</sup>*The Constitution of the Federal Republic of Nigeria, 1979 and 1989*, Chapter IV, Articles 30-42, 1979 and 1989.

<sup>4</sup>South-South Geo-Political Zone, *Where We Stand* (Port Harcourt, Nigeria: World Press, 2005).

On balance, the preponderance of opinion was against diarchy or triarchy. One of the past military rulers stated the following:

Except in very rare cases, the senior military men who qualify to participate in government in a diarchy are not the men who would normally carry out coups. Coups are normally undertaken by middle-ranking officers, who by rank and experience are too young to represent their respective services in government. Our experience in Nigeria shows that the military are more impatient with their peers in government than with civilian governments.<sup>5</sup>

There are many examples in support of the proposition. J. T. U. Aguyi Ironsi's military regime lasted six months, Murtala Mohammed's military administration ended with his assassination by Major Dimka six months into office, and Mohammed Buhari's junta was overthrown twenty months after seizing power. The Report of the Political Bureau reflected on the desirability of diarchy and triarchy in the following words:

As regards traditional rulers, we cannot see in which way their inclusion (in an administration) can provide a unifying force ... They compete against the nation for allegiance, represent a force against the principle of popular democracy, and are dysfunctional reminders of national differences. ... [We are not] persuaded by the arguments for diarchy or triarchy, because neither is capable of providing an insurance for progress, stability and guarantee for peaceful continuity.<sup>6</sup>

The 1978 and 1988 Constituent Assemblies were silent on the role of traditional rulers. In the wake of this omission, the Dasuki Panel was set up to examine the place of the third tier of government and the role of traditional rulers. The Dasuki report was to be a working paper for members of the 1988 Constituent Assembly. This report will be

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<sup>5</sup>*Report of the Political Bureau*, 78-79.

<sup>6</sup>*Ibid.*, 76.

considered in greater detail under discussions of local governments. The 1988

Constituent Assembly defined traditional ruler as,

.... The person who, by virtue of his ancestry, occupies the throne or stool of an area or has been appointed or elected to it in accordance with the customs, traditions, and usages of the area, and has traditional authority over the people or any other person who, prior to the commencement of this constitution, has been elected or appointed by instrument or order of the Government to exercise traditional authority over an area or community in the State recognized as such by the Government of a State.<sup>7</sup>

“Traditional Council includes Emirate Council and means a body constituted as such by law of a State and presided over by a Traditional Ruler and which consists of such members as may be prescribed by that law.”<sup>8</sup> Article 8 of 1989 constitution made provision for the establishment of a Traditional Council for a local government area or a group of local government areas. Article 8(2) stated that each council had to be presided over by a Traditional Ruler. The fourth schedule of the Constitution provided that “...nothing in this schedule shall be construed as conferring any executive, legislative, or judicial powers on a Traditional Council.”<sup>9</sup> This provision agrees with the recommendation of the 1988 Constituent Assembly.

#### *Structure of Government: Relations among the Constituent Levels*

##### Confederalism

Confederalism has been defined as an arrangement wherein multiple communities or nations are subordinated to the separate governments of the subnational units. The

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<sup>7</sup>*Report of the Proceedings of the Constituent Assembly, 1988 – 89* (Lagos, Nigeria: Government Printers, 1988 and 1989), vol. 1, 20 – 21.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid.



central or general government exists at the will of the subnational governments. The role of the central government is generally one of supervision or coordination of previously agreed essential or cooperative services.<sup>10</sup>

The U.S. experienced the confederal arrangement from 1777 to 1787. The Articles of Confederation were signed and ratified by the delegates of all the thirteen states at various times. It was finally signed and ratified by the delegates and became operational on March 1, 1781. The inadequacies of the confederal arrangement led the General Assembly of Virginia, on January 21, 1786, to propose a joint meeting of commissioners from the states to consider how much a unified system in their commercial regulations might be necessary to their common interest and permanent harmony. A federal plan relative to that objective was therefore recommended.<sup>11</sup>

On February 21, 1787, the Continental Congress adopted a resolution calling a convention of delegates from the several states to be held in Philadelphia on the second Monday in May 1787:

....for the sole and express purpose of revising the Articles of Confederation and reporting to congress and the several legislatures such alterations and provisions therein as shall, when agreed to in congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and preservation of the union.<sup>12</sup>

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<sup>10</sup>Ibid.

<sup>11</sup>*House Document No. 95 – 215* (Washington, DC: U.S. Government Printing Office, 1990).

<sup>12</sup> *Historical Note* by Peter W. Rodino, Jr., Chairman, Committee on the Judiciary on the Constitution of the U.S., February 7, 1974.

The ratification by New York State was delayed, and it took the persuasive writings in the Federalist Papers by Jay, Madison, and Hamilton to get New York State to ratify. The U.S. Constitution was thus established on September 1787.

The above historical background of the making of the confederal and federal constitutions in the U.S. has been given as a reference point for those who advocate confederalism for Nigeria. Given the Nigerian multi-ethnic and cultural underpinnings, will Nigeria accept confederal management?

Opposition to confederation ranged from fear of diminishing the status of the country in the comity of nations to the fact that confederalism would be unrealistic and impracticable. The opponents argued that it would be impracticable for minority groups of certain regions to accept the proposed confederal regions.<sup>13</sup>

The words of the late Ken Saro Wiwa, a political activist and president of the Association of Nigeria Authors, are worthy of note here: "In brief, what I am asking for is confederation of Nigerian States or Commonwealth of Independent Nigerian States in which each ethnic group will develop at its own pace."<sup>14</sup>

The ethnic appeal in Saro-Wiwa's demand, although well-intentioned, rendered his demand politically impracticable. There are numerous ethnic groups in Nigeria. Perhaps, in time, his demand will win more political allies. The only time that Nigeria came close to adopting a confederal arrangement was when Decree No. 7 was enacted in March 1967. It attempted to implement the agreements and decisions reached at

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<sup>13</sup> *Report of the Political Bureau*, 84.

<sup>14</sup> K. Saro-Wiwa, "The National Question – What is the Answer?" *Citizen*, December 4, 1992, 13.

Aburi, Ghana, among Nigeria's military leaders during the national crisis preceding the civil war. This agreement was between Gowon and Ojukwu, the military leaders of Nigeria and Biafra, respectively. The Nigerian bureaucrats advised Gowon against turning federal Nigeria into confederal nation. As the outbreak of the civil war became imminent, Ojukwu adopted the slogan, "on Aburi we stand." He blamed Gowon for non-implementation of the accord reached at Aburi. The confederal idea died with the war, but its spirit continues to haunt Nigeria political thought even twenty-five years later.

### Federalism

Kenneth Wheare conceptualized federalism or federal government by defining the federal principles: "By federal principle we mean the method of dividing powers so that general and regional governments can each share, coordinate, and be independent."<sup>15</sup> The principle of federalism is, therefore, one of organization and practice, whose ultimate test is how the federal system operates. Wheare appeared to have relied excessively on what he assumes to be the essential features of federation in the U.S. in formulating his principle.

In *Readings on Federalism*, Wheare's position has been challenged.<sup>16</sup> It is not clear whether Wheare regards federalism as a process or a condition. While there are passages in his discussion on federal government which give the impression that K.C

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<sup>15</sup>K. C. Wheare, *Federal Government* (New York/Oxford: Galaxy-Bush, Oxford University Press, 1963), 11.

<sup>16</sup>Adele Jinadu, "Theory of Federalism," in *Readings on Federalism*, ed. A. B. Akinyemi, P. D. Cole, and W. Ofouagoro (Ibadan, Nigeria: Ibadan University Press, 1979), 17.

Wheare looks upon federation as a process, there are passages which talk of federalism as a condition. This approach is probably due to his legalism. The legal framework defines the objective--UNION--which is to be attained, but it also establishes a system of government. In this way, federalism is both an end and a means.

Wheare's contribution to the conceptualization of federalism has not escaped the criticism of Friedrich, who argues that federalism is a process rather than a design.<sup>17</sup> If it is thus understood, it would become apparent that federalism may be operated in both the direction of integration and differentiation.

Adele Jinadu assessed Friedrich's contribution as worthy of note. In her articles in *Readings on Federalism*, she observed:

...It asserts that federation is a general principle of social organization, and that the degree of federalism in a political system is a function of social and not legal criteria. The interesting aspect of this reformation is that it is applicable to systems which conform to Wheare's classic formulation as well as those, like confederal and unitary systems, which do not conform to it.<sup>18</sup>

It is clear that Nigeria borrowed from the U.S. system of federalism, and operates it with only minor local modifications, such as the requirement of the "federal character"<sup>19</sup> in the choice of members of the cabinet. The problem of conceptualization is, however, compounded by the fact that, as Daniel Elazon observed, "There are several varieties of political arrangements to which the term has properly been

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<sup>17</sup> Carl J. Friedrich, "New Tendencies in Federal Theory and Practice," (paper presented at the 6<sup>th</sup> World Conference of the International Political Science Association, 1964), 1.

<sup>18</sup> Jinadu, "Theory of Federalism," 17.

<sup>19</sup> The requirement of federal character is entrenched in Article 15(2) of the 1979 and 1989 Constitutions. It is a provision aimed at promoting ethnic balance in appointments in any government or its agencies.

applied.”<sup>20</sup> Another author, William Riker, also had very interesting observations to make:

An initial difficulty in any discussion of federalism is that the meaning of the word has been thoroughly confused by dramatic changes in the institutions to which it refers<sup>21</sup>

Wheare declared that the federal form of constitution is brought about by circumstances where people are prepared to give up only certain limited powers, with both sets of powers to be exercised by coordinate authorities. Thus, he defined federalism rigidly and admits it by claiming:

I have put forward uncompromisingly a criterion of federal government, the delimited and coordinate divisions of governmental functions ... and I have implied that, to that extent to which any system of government does not conform to this criterion, it has no claim to call itself federal.<sup>22</sup>

In the Nigerian situation, the “delimiting and coordinate division of governmental functions” has been extended to the third tier of government, that is, local government. This has been the case since 1979. Obasanjo, the former Nigerian military ruler, observed:

For the first time since the 1979 constitution established the third-tier of government, i.e., the local government, it was accorded clear constitutional status in terms of defined and stipulated responsibilities, funding and security of existence.<sup>23</sup>

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<sup>20</sup>Daniel J. Elazon, “The Ends of Federalism: Notes Towards a Theory of Federal Political Arrangements,” in *Partnership in Federalism* ed. Max Frenkel (Bern, Switzerland: Peter Lang, 1977), 26.

<sup>21</sup>William H. Riker, “Federalism,” in *Governmental Institutions and Processes* ed. Nelson Polsby and Fred Greenstein (Boston: Addison-Wesley, 1975), 93.

<sup>22</sup>Ibid.

<sup>23</sup>Olusegun Obasanjo, *Constitution for National Integration and Development* (Lagos, Nigeria: Friends Foundation Publishers, 1989), 10.

Federalism has also been described as a constitutional compromise between confederalism and unitarism. It provides an arrangement for the coexistence of national unity and subnational self-determination. The characteristics of a federal system are that the central government shares power and authority with several states, sometimes called regions or cantons. With this arrangement, each level of government is constitutionally autonomous in the exercise of and responsibility over powers allocated to it.

#### Nigeria's Unique Federalism

What is the form of federalism that operates in Nigeria with regard to the momentous constitutional position the third tier of government enjoys? It is widely believed that the American system of federalism was designed by the founding fathers as one embracing two separate levels of sovereignty. The sovereignties, federal and state, were to exist side by side, each virtually independent in its own sphere. This dualism was accepted by political scientists when the discipline emerged in the late nineteenth century and was formally developed by them into the theory of dual federalism.<sup>24</sup>

In the U.S., Abraham Lincoln spoke of national supremacy during the American civil war, when issues such as the nature of American federalism were closely associated with the survival of the union. In Nigeria, General Gowon fought the civil war with the catchy phrase "To keep Nigeria one is a task that must be done". In other words, Biafra had to be crushed. So it was.

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<sup>24</sup>Daniel J. Elazar, *The American Partnership: Intergovernmental Cooperation in the Nineteenth-Century United States* (Chicago: University of Chicago Press, 1962), 11.

The Nigerian local government relationship with the national and state governments does not completely fall into what we may call cooperative federalism or the so-called new federalism. Until further research is done on the uniqueness of Nigeria's present federalism, we rest our case and term it "unique federalism."

In a unitary state, the desire for a genuinely independent status in the several participating regions or states will probably disappear.<sup>25</sup> When this arrangement takes effect, the final governmental authority will repose in a single central government. Great Britain incorporates England, Wales, and Northern Ireland to form a unitary state (although since the mid-1990s significant devolution has taken place). Such a state has no appeal for Nigerians.

In some areas of sharing power and responsibilities, both federal and state levels of government have concurrent jurisdictions. However, under the Nigerian political system, a third tier of government--local government-- was enshrined in both the 1979, 1989 constitutions, as well as the 1995 constitution and could deal directly with the central government. This study will now consider the interrelationships that exist between the state and local governments on the one hand, and the central government on the other hand.

On May 1984, the Chief of Staff, Supreme Headquarters, Major General Babatunde Idiagbon, inaugurated a twenty-man team to review the local government administration in Nigeria. He gave the Dasuki Committee the following terms of reference: (1) to re-examine the existing structures, functions, and financial resources available to local governments for the performance of their functions, (2) to propose

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<sup>25</sup> Corey and Abraham, *Elements of Democratic Government*, op. cit, 157 – 58.

how best to manage intergovernmental relations between federal, state and local government service boards, or commissions, and (3) to evolve a “Proper Place” for traditional authorities in local government. The Committee had not reported to Idiagbon before he was removed by Babangida’s palace coup. In his address to the nation on his political program for the country, President Babangida expressed concern over the ineffectiveness of local government as a third tier of government in practice. He declared: “This administration is committed to making local government a third tier of government in practice. This will enable basic development to take place at the grass-roots level where most Nigerians live.”<sup>26</sup>

What, then, was the place of local government in the 1979 constitution that caused the President so much concern? Section 7 of the 1979 constitution states the following:

7(1) The system of local government by a democratically elected local government council is under this constitution guaranteed; and accordingly, the government of every state should ensure their existence under law which provides for the establishment, structure, composition, finance, and functions of such councils.

7(3) It shall be the duty of a local Government Council within the state to participate in economic planning and development of the area ... and to this end an economic planning board shall be established by a law enacted by the House of Assembly of the State.

7(6) Subject to the provisions of this Constitution,

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<sup>26</sup>*Transition to Civil Rule* (Lagos, Nigeria: Government Printing Bureau, 1990), 9.



- (a) The National Assembly shall make provisions for statutory allocation of public revenue to Local Government Councils in the Federation;
- (b) The House of Assembly of a State shall make provision for statutory allocation of public revenue to Local Government Councils within the State;

7(10) Subject to the provisions of Chapter III of this Constitution, the House of Assembly of the State shall enact a law providing for the structure, composition, revenue, expenditure, and other financial matters, staff matters, and other relevant matters for the Local Government in the State.<sup>27</sup>

These provisions established beyond reasonable doubt that the local government looked upon the national and state governments for its fiscal allocations. Did this relationship alter in the wake of the 1989 Constitution? According to the provision of section 7(10) (above), the 1989 Constitution certainly empowered the local governments, thanks to the recommendations of the Dasuki Committee.

The Dasuki Committee Report attributed the problems of local government to operational factors arising directly from the behavior and attitudes of persons who operated the system. It recommended that the 301 units of local governments, as contained in first schedule, part I of the 1979 Constitution, should be retained.<sup>28</sup> (It should be noted here that this number was increased to 589 by Babangida's administration by decree and not by constitutional amendment.) The number went up to

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<sup>27</sup>*Constitution of the Federal Republic of Nigeria, 1979, Section 7, 121.*

<sup>28</sup>*Ibid.*

774 during Abacha's regime. On the functions of local governments, the Committee also recommended that, subject to the provisions of the Fourth Schedule, the following functions should be given priority: environmental sanitation, roads and drainages, excluding federal and state roads, rural water supplies, community development, and maintenance of law and order. On local government finance, the Committee noted that, under the 1979 Constitution, the Revenue Act of 1981 and various local government edicts, the local governments in Nigeria derived their revenues from the following sources: 10 percent share of the Federation Account, 10 percent share of revenue of state governments, and internally generated revenue from taxes and rates, fees from licenses and other facilities. These allocations changed from time to time. The Committee said that the allocation from the Federation Account was regularly paid, but that only a few states paid the allocation of 10 percent of the states' total revenues to the local governments. Therefore, the Committee recommended that the federal government should direct all the state governments to stop interfering with the funds of the state-local government joint accounts. The federal government should also ensure that the state government discharged its constitutional responsibility by paying 10 percent of its total revenue into joint state-local government accounts promptly and regularly. The federal military government accepted the recommendations.

The Dasuki Committee noted that local government affairs have assumed an intergovernmental character since 1979. This is because various provisions in the constitution have ceased to make local government exclusive creations of the state governments. The Committee found that there was strong support for more federal

involvement in and monitoring control over local government matters, particularly with respect to ensuring that the statutory allocations for local governments are not diverted by state governments. The Committee therefore, recommended the establishment of a National Government Commission which would be responsible to the Supreme Headquarters.<sup>29</sup> Some of the functions of the Commission included: (1) monitoring federal-state-local government relations with particular reference to functions and finance, (2) setting standards and determining the broad policies governing education and training programs in the field of local government, and (3) rendering advice or periodic reviews of local government structural arrangement. However, the government considered the setting up of a National Government Commission unnecessary, since the unit under the Directorate of State Administration in the General Staff Headquarters could be strengthened to carry out the functions recommended under items (2) and (3) above. The Committee felt it desirable to insulate traditional rulers from partisan politics. It further recommended that, in order to reduce the incidence of politically motivated appointments, removals or depositions of traditional rulers, that this rule should be strictly complied with by all concerned. The government accepted this recommendation.

It should be observed here that traditional rulers themselves should decline roles that are openly partisan. Therefore, they should stay away from the grass-roots politics of local governments. By nature, the latter are closest to the traditional rulers' domains, and the rulers should thus exercise restraint and distance themselves from grass-roots politics. However, judging from the history of social and religious unrest in Nigeria,

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<sup>29</sup>Ibid., 22.

they should perhaps be allowed a more significant role in social and cultural matters.

The federal military government made it clear to the traditional rulers that they would henceforth be held responsible for social unrests erupting in their domains.

Multinational corporations like Shell, Elf, Agip – all oil-prospecting companies in Nigeria – know the cost of non-cooperation with traditional rulers. The sabotaging of oil pipelines is a frequent occurrence, which is said to result from the exploitative position adopted by the oil companies. The rallying point for these companies and the saboteurs is the traditional ruler.

In the wake of the Dasuki Report, in 1988 the CRC and the Political Bureau recommended that the local government council system become effective as the third tier of government, as is the case under the 1989 and 1995 Constitutions. The Bureau observed that the local governments had not possessed independent executive powers. New provisions were made to vest the executive powers of the local government in the Chairman. Provisions were also made for direct allocation of funds to local government councils from the federal account and state consolidated account to ensure their financial autonomy.

The CRC 1988 provided for the autonomy of local government in its report. Article 7(1) provided that the system of local government by democratically elected local government council was guaranteed. The 1989 Constitution adopted this section in its entirety, and it became Article 7(1) of the 1989 Constitution.

The place of local governments under the military administration will now be examined. The Executive Chairman now had his Secretary to the Council, supervisors,

as well as special aids and assistants appointed by him after the manner of state Chief Executive – Governors. Alex Ekwueme, the last civilian vice president, expressed grave concern:

From 301 Local Government areas in 1979, we have now graduated to just under 600 (589) with many more reported to be in the pipeline. Each local government is now a mini-state fully equipped with the complete apparatus of the Executive Presidential system, with appropriate division of functions – executive (Chairman and Supervisors), legislative (Speaker, Deputy Speaker, Majority Leader, and Councillors), and judiciary (Customary Courts).<sup>30</sup>

In the euphoria of newfound autonomy under the Abacha administration, the secretaries of local councils in the country advocated a four-year, rather than the actual 3-year term. In an editorial, the “Daily Champion” examined the demand of the secretaries and found no merit whatsoever for it. The paper argued:

A new dimension has been added to the agitation for the extension of the tenure of local government with the recent call by the secretaries, who anchored their request on the ground that such an extension would conform with the tenure of other tiers of government under the presidential system.

We are disturbed that the functionaries of local governments have failed to appreciate the enhanced status of the third tier of government under the present arrangement ... until recently, the tenure of local government had been two years, but the 1989 Constitution increased it through a provision which states: A local government council shall stand dissolved at the expiration of a period of three years, commencing from the date of the first sitting.<sup>31</sup>

The 1989 Constitution was subjected to many amendments by decree, some of which were further amended to return to the status quo. Article 7(2) of the 1989 Constitution provided for 449 local government areas in Nigeria to be named in the first

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<sup>30</sup>Alex Ekwueme, “More than Government of National Consensus,” *Daily Champion*, January 22, 1992, 6-7.

<sup>31</sup>“Local Government Tenure,” *Daily Champion*, February 12, 1993, 4.

schedule. By various decrees, the number of local governments had been increased to 589 and then 774. The Babangida administration announced its intention to further increase this number, but he was eased out of office in 1991 before carrying out this intention.

### *Summary*

From the foregoing it is evident that a constitutional system includes all the authoritative rules on the way a governmental system is supposed to operate. Nigeria had experimented with parliamentary and presidential systems. The military in the Nigerian system of government, though an aberration, dominated Nigerian political life. The much-needed good government for the people has eluded Nigerians.

Nigeria toyed with a confederal arrangement in 1967, just before the outbreak of her civil war which raged from 1967 until 1970. The local government system in Nigeria was embraced by the people. It became the government nearest to the people, a developmental arm rooted in the local areas.

The reality of the Nigeria constitutional system is that the choices are set. There are not many gray areas. It seems certain that Nigerians will continue to operate a federal system of government and those social problems such as religion, resource control and allocation, state and local government, as well as the minority question will not just go away. These issues will be addressed in the following chapters.

### CHAPTER III

#### POLITICAL PARTIES

This chapter takes a close look at Nigerian political parties and their growth from 1979 to 1995. A core factor that stands out and impeded their growth is ethnic loyalty. The analysis here considers the development of political parties in Nigeria from a comparative perspective of party development.

Many problems trail the path of Nigerian political parties, including elections rigged with abandon. Party political leaders have relied on ethnic sentiments rather than what the parties could do for the people when they win elections. Winners of elections went for what they could get from the system while the losers institutionalize opposition. Good governance was in the process thrown over board.

For the most part party development in the western world was not based on ethnic considerations. There are lessons here for Nigerian political parties.

#### *Political Parties in Nigerian Political History*

In its nature and origin, a party was a voluntary club, not an organ of the State but an organ of Society, which served the State by mediating between social thought and political machinery. It formulated trends of social thought in definite programs. It brought these programs and the people who stood as candidates on their beliefs to the attention of the electorate. It then left the rest to the candidates who had been elected, trusting them to act in their capacity as members of the parliament and ministers of the executive (i.e., as organs of the state) so that the ideals of the party programs would be carried into political effect.<sup>1</sup>

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<sup>1</sup>Ernest Barker, *Reflections on Government* (Oxford: Oxford University Press, 1958), 87.

In Africa, and Nigeria in particular, one thread that usually links members of political parties is ethnicity. People of the same ethnic background usually join the same political party. The case of Nigeria is instructive if one considers the party formation before Babangida forced his two parties down the throats of Nigerians. During the Second Republic (1979 to December 1983), the major parties were National Party of Nigeria (NPN), which derived its numerical strength from the North; the United Party of Nigeria (UPN), which was essentially a Yoruba political party with overwhelming Yoruba membership; The Nigerian Peoples Party (NPP), which had its strength in Igbo heartland of Nigeria; and the Peoples Redemption Party (PRP), which derived its loyalty from Kano, the predominantly Hausa homeland. People of this political persuasion see the NPN as the Fulani party and not necessarily the northern Nigeria party. These ethnic political parties do not seek support from each others ethnic groups. They direct their membership drive to the minority areas. The historical alliances have tended to be the minorities of eastern Nigeria. Rivers, Cross Rivers, and Akwa Ibom residents flock to the northern-based party. The minorities of the Middle Belt in the North, willy-nilly join the northern based party. The minorities of the former Midwest of Nigeria divide their allegiance between the northern and western parties.

This scenario could fit into what academics would conceive as a purely ideological group open only to those who share the goals of the founding members and identify their interests with the original conception of the interests of that group. Here, the interest simply means the ethnic grouping.



The question that would almost certainly arise from these rainbow alliances is: what about the Nigerians in the big cities like the nation's capital, Abuja or Lagos, and the State capitals which are cosmopolitan in nature? The answer lies in what Okwudiba Nnoli characterized as the politics of ethnicity.<sup>2</sup> Nigerians are as much members of ethnic union as they are of different churches. As the communal associations or unions proliferated and urban dwellers flocked to them, intra-class and inter-individual socioeconomic competition began to be translated into competition among communal unions.<sup>3</sup> The leaders of these unions, whether home-based or not, saw them as political launching pads to fight for the national cake. The idea was which ethnic group would get what, how and when. Nnoli observed: "Politics during the nationalist struggle for independence from colonialism was dominated by the conflict arising from the interests of the Nigerian petty bourgeoisie against the dominance of the interests of the financial oligarchies of Britain in particular and Europe in general."<sup>4</sup>

As Nigeria prepared herself for the democratization of the government, the need for organized political parties intensified. Corey and Abraham went farther than just defining political party. They agreed that, "The political party is a voluntary association aiming to get control of the government with its members."<sup>5</sup> Because of the diversity of views on most subjects in a democracy, two or more political parties have always

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<sup>2</sup>Nnoli, *Ethnic Politics in Nigeria*, 140.

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

<sup>5</sup>Corry, *Elements of Democratic Government*, 287.

developed where democracy has flourished. Those who favour one party sow the seeds of dictatorship, since that one party must be their own.

Nigeria's past political experience instilled fear in the minds of those interviewed by the author. They noted the existing North/South dichotomy and the problem of religion. Those who feared the effects of the great divide pointed to the experience of the 1963-64 federal election when the Action Group and the National Council of Nigeria and Cameroons (NCNC), both southern political parties, came together in an unholy alliance called the United People Grand Alliance (UPGA) against the Nigerian National Alliance (NNA), a northern-dominated alliance. Political party formation which is polarized by religion—for instance, the Christians coming together against Muslims—is viewed as fraught with great danger.

The Political Bureau made several recommendations on which political party option to adopt. It felt that the two-party system was best for Nigeria, but that the system should function under certain conditions. Both political parties should accept the national philosophy of government. Membership of political parties should be open to every citizen of Nigeria, regardless of place of origin, sex, religion, or ethnic grouping. The national executive organ and the principal officers of each political party must reflect the federal character of Nigeria, and each of the political parties must be firmly established in at least two-thirds of the local government areas in each of the states, including the federal capital territory (Abuja).

The experience of the NPN on the one hand, and the UPN/NPP on the other hand, during the Shagari's administration (1979 -83) tends to show that many parties

formed and registered at the beginning of each political era (in this case, the Second Republic), and sooner or later gravitated around two parties. The NPP flirted with the NPN for a while, but the accord fell through. Consequently, what emerged was the UPN and the NPP teaming up, while the NPN remained the party in power. This formation was characterized by ethnoreligious considerations, or the North/South dichotomy. The opposition party was determined to oppose every measure of the government, while the latter ensured total destruction of the opposition party. It was usually a winner-takes-all game. The opposition party was not allowed a free hand to oppose the government. There was the problem of succession by means of free and fair elections. Reflecting on the crises of succession through elections, Babangida observed the following:

[Some] of us ... did witness the practice of politics in the First Republic, from October 1, 1960 to January 15, 1966. The lack of adequate and guided political culture had led to the politics of intolerance and indiscipline among politicians. The rules which were designed to govern the game of politics were often ignored or blatantly violated as politicians turned the political arena into a battleground which only catered for the "survival of the fittest."... Political failure in one election meant failure for all time. The incumbent political actors closed all re-entry channels. It was no wonder that the period witnessed "politics with great bitterness." The wishes of political succession which we experienced all linked to this political attitude... The rights of the individual as well as of groups were eroded with reckless abandon. Elections which were designed to make leaders more accountable and give power to people to determine their new leaders became nightmares for Nigerians. Rigging of elections was rampant. The people had been deliberately disenfranchised.<sup>6</sup>

It became just a matter of time for Babangida to change the wretched system he so vehemently attacked. As noted, the experience of the Second Republic did not improve the political landscape. Indeed, there was no ray of light in the tunnel. Would

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<sup>6</sup>Ibrahim Babangida, *Address to the Nation on Political Program for the Country: Transition to Civil Rule* (Lagos: Government Printing Office, 1992), vol. 1, 6.

the Babangida administration provide that light? In the wake of the recommendations of the Political Bureau, Babangida set in motion the process of evolving two political parties for Nigeria.

It must be recalled that, when Babangida seized power on August 27, 1985, he banned political activities and politicking. Before the ban on politics was lifted, however, the military government established the National Electoral Commission (NEC). As described in its section 3(1), its functions were to organize, conduct, and supervise all elections to all the offices provided for in the Decree. It had to provide clear guidelines, rules and regulations for the emergence, recognition and registration of two political parties. Two political parties had to be registered, and their eligibility to sponsor candidates for the elections was to be determined according to the stipulations of the Decree. It also had to monitor political campaigns and regulations which would govern the political parties.

On May 3, 1989, President Babangida lifted the ban on politics. *Newswatch* captured the mood when it declared:

President Ibrahim Babangida lifts ban on politics, promulgates a new constitution, and tells politicians to go to work. Babangida told the nation: "Nigerians other than those disqualified are now free to form political associations." For Nigerians, the lifting of the ban means that the roadblock to civil rule has been removed.<sup>7</sup>

Asikpo Essien –Ibok, a political scientist and one of the new breed of politicians (those who had no prior political exposure), declared the following:

This is the moment we have been waiting for. It is now the duty of the new breed not to let down the country by helping lay a solid foundation for the third Republic. The lifting of the ban has demonstrated the

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<sup>7</sup>"Back on the Road" *Newswatch*, May 22, 1989, 10.

determination of the Babangida administration to keep faith with the transition programme.<sup>8</sup>

Nigerians had been starved of political activities from January 1984 to May 1989, and jumped at the chance. On its cover headline, *Newswatch* screamed: “Political groups sprout like mushrooms: within 10 days some 15 political associations have emerged.”<sup>9</sup>

At the end its exercise of registering the political associations, the NEC recommended the People’s Solidarity Party (PSP) and the Patriotic Front of Nigeria (PFN) to Babangida for approval. In his familiar style, Babangida disqualified all the associations, to the chagrin of many who had invested huge sums of money in the founding of parties. What then?

Babangida then imposed two parties on the nation, the National Republican Convention (NRC) and the Social Democratic Party (SDP). This study will now focus on the constitution and manifestoes of the two parties for necessary comparisons. The only difference was as to name. The founder was, of course, Babangida. The aims and objectives of the two parties were the same.

The Armed Forces Ruling Council (AFRC), in fulfillment of the Transition to Civil Rule Decree, approved the registration of the two parties – NRC and SDP. The aims of the two parties should at all times and in all spheres conform with the fundamental objectives and directive principles of state policy as enshrined in Chapter 11 of the Constitution of the Federal Republic of Nigeria. Accordingly the parties

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<sup>8</sup>Ibid.

<sup>9</sup>Ibid., 11.

should pursue the political, economic, social, educational, and other objectives, as well as the directive principles and policies stated therein. The objectives of the parties were to attain political power through democratic and constitutional means for the purpose of creating socioeconomic conditions in which the productive energies of individual citizens and corporate groups would be enhanced and utilized for national development. They had to promote participatory democracy at all levels of government, in the belief that sovereignty belongs to the people from whom government, through the Nigerian constitution, derived all its power and authority.

It is clear that there are basic similarities between the two parties (NRC and SDP). What choice, then, did the electorate have? Hypothetically, imagine if the U.S. Democratic and the Republican parties had the same aims and objectives, or for that matter the Conservative and Labour parties in Britain pursued the same aims and objectives. In effect, Babangida succeeded in creating just one party for himself and ordered Nigerians to fall in behind his monstrous organizations called parties.

It is not surprising, then, that on October 17, 1992, Babangida disbanded the executives of both parties at all levels of administration: national, state and local governments. No party worth its name could be so treated not even by its most respected founders. The party should be greater than any of its members, and that includes its founders.

### *Political Parties and Constitutional Politics in Nigeria*

How did the Constituent Assemblies face up to the task of creating an environment for the formation of parties that would cut across ethnic lines? The Political Bureau

reported that there was overwhelming support for the institution of political parties in the next civilian administration. This position was supported by the results of the research questionnaires for this dissertation, which had been distributed to a cross-section of Nigeria. The Bureau sought to find a rational political party system, and came out with the following considerations:

- i. Political parties are both expression and management of conflict within a political system
- ii. They are not only products of their environment but also function as instruments or institutions organized to affect the environment.
- iii. Political parties function as agents of political participation and political mobilization, and the more important function of parties may be said to be the aggregation of demands.
- iv. It is political parties that normally collate these demands and evolve both ideas and programs which can put them in a broad spectrum, such as social justice.
- v. The articulation of these demands aids the understanding of the need of a large number of people and facilitates the process of legislation which is the end-product of the demands.
- vi. Political parties create the opportunity for a wider group within the environment to share in the exercise of political power.<sup>10</sup>

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<sup>10</sup>*Report of the Political Bureau*, 129-30.

The CDC, in its 1977 report, separated the two-party system from a multi-party system, although it opted for the multi-party system. It argued that a two-party system was a product of an historic growth, and that over time Nigeria could develop a two-party system. A considerable number of supporters of the multi-party system interviewed by the author in 1976 and 1989 expressed the hope that eventually a two-party system would emerge. They, like the CDC, preferred to wait for its development. One of the strongest advocates of the multi-party system declared the following:

What we need is a multi-party system of government –say two to four parties founded on concrete ideals and commitments about the future of Nigerian society, the Nigerian economy, and Nigerian government. The hope may well be that some day this position can crystallize into an effective two-party state which can provide the electorates with an alternative choice of men and policies, and competing sources of information and leadership.<sup>11</sup>

*Elections, Political Parties and Constitutional Developments in Nigeria*

There is general agreement that some basic conditions are necessary to hold free and fair elections. These include an honest, competent, non-partisan administration to run the elections; a developed system of political parties, traditions, and candidates before the electorates, who then exercise their option of choice. Further important items are an independent judiciary and generally accepted conventions which, if not obeyed, will destroy the whole system.

The Federal Electoral Commission, established in 1977 during Obasanjo's administration, successfully organized the 1979 elections that ushered in the Shagari civilian administration. However, in an address to the nation concerning his political

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<sup>11</sup>Quoted in *ibid.*, 131.



program, Major General Babangida (as he then was) made a scathing attack on the electoral process that ushered in the 1979 civilian government; he stated:

Before inaugurating the second experiment in civil democratic politics, the Military Government in power had thought that the 1979 Constitutional provisions were adequate to usher in a new era of decent politics of accommodation, tolerance and participation ... We are aware of the appalling performance of our politicians of the Second Republic. These politicians improved on the vices of those in the First Republic, thus implanting more political violence in our already adulterated political culture... Political parties hardly abided by our electoral laws, and hardly any one of them rendered correct annual reports to the Federal Electoral Commission (FEDECO). Rigging mechanisms were perfected brilliantly by politicians. The economy was plundered ruthlessly, leading to the current economic measures aimed at turning the economy around. The military again intervened to restore sanity in the political arena.<sup>12</sup>

The Political Bureau recommended that a National Commission on Political Parties should be established. It should be charged with the responsibility of conducting all elections at three levels of government. Elections for the posts of President and Vice President, Governor, Deputy Governor should be conducted every 5 years, as should the elections to the national and state assemblies. Elections to the local government council should be conducted every 3 years.<sup>13</sup>

In response to the foregoing, the Babangida military administration promulgated Decree No. 23 on September 30 1987, which stated that a body would be established for Nigeria, known as the National Electoral Commission (NEC). It would comprise a Chief National Electoral Commissioner who would be Chairman and eight other members, including a woman, to be known as National Electoral Commissioners. The

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<sup>12</sup>*Transition to Civil Rule*, vol. 1, 6-7.

<sup>13</sup>*Report of the Political Bureau*, 142.

functions of the Commission would be to organize, conduct and supervise all elections and matters pertaining to elections into all of the elective offices provided for in the Decree or the Constitution or any other law. It would provide other guidelines, rules, and regulations for the emergence, recognition, and registration of two parties. In that connection, it would register two political parties and determine their eligibility to sponsor candidates for any elections. It would also monitor political campaigns and provide for rules and regulations governing the political parties. Finally, it would provide rules to govern qualifications to vote and be voted for. It stated that the AFRC could give the Commission such directives as seemed just and proper for the effective discharge of functions of the Commission. Some of the sections provided Babangida with the escape clause he needed to impose his will on the electorate, and this shall be elaborated upon below.

The functions of the Commission were teleguided by Babangida's administration as he jumped in at will to disqualify any or all candidates as the elections were in progress. The annulment of the June 12, 1993, elections speaks volumes about this tactics. Indeed, the provisions guiding the conduct of free and fair elections were honoured by breach rather than by observance on the part of the NEC and Babangida.

The functions of NEC, as noted above, included organizing, conducting, and supervising all elections and matters pertaining to elections into all of the elective offices provided for by Decree No. 23. In light of the above provisions, the NEC had --- for reasons best known to itself --- not complied with the Decree that created it in the

first place. What, then, happened as consequence of this failure on the part of the NEC? Nothing!

The NEC claimed that it successfully organized the local government elections in 1989 and the state assemblies' elections. How did the NEC fare with the presidential elections? These were to be the climax of the climb through the Transition Programme that was to terminate with the swearing in of the Civilian President on January 2, 1992. In the words of Babangida, "Rigging mechanisms were perfected brilliantly by politicians during the 1979 elections."<sup>14</sup> However, Babangida was to preside over the mother of all rigging mechanism during the presidential primaries under the watchful eyes of his administration (August – November 1992). The rigging game is seen through the lenses of Osifo Whiskey, who stated:

A litany of rough tactics --- voting without accreditation, multiple voting, transportation of voters from one ward to the other; use of padded registers, bribing of electoral officials, and falsification of results --- all combined to turn the August 7, 1992, Presidential primaries into a colossal fraud.<sup>15</sup>

"Option A4" was one of the political innovations of the Babangida administration. It has been described as an unconstitutional method of electing a Presidential candidate recommended by the NEC, and adopted by the AFRC. This new electoral system involved the contest for power at four levels, starting from the ward level, the smallest electoral unit, to the local government area unit, the state, and the national levels. It was a modification of the U.S. Primaries.

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<sup>14</sup> Osifo Whiskey, *Tell Magazine*, August 24, 1992, 20.

<sup>15</sup> Ibid., 25.

Political parties are crucial to Nigeria's political evolution. Up to the military incursion into politics of the nation, there were multiple parties drawn on the basis of ethnicity. That was not good enough. The parties had, most often, found solace in coalition in order to achieve their political objectives. The end result would be party alliances, such as that between the NCNC and the NPC in 1959 to form the UPGA and the NNA in 1964. These alliances did not stand the test of time. They broke up soon after achieving a particular, selfish objective. One such objective was the creation of the Midwest region, which was an act of political vendetta by the ruling NCNC – NPC alliance against the Action Group, a western region based political party. The Midwest region was the only region or state created by a civilian government in Nigeria.

In 1979, the Obasanjo administration desisted from decreeing a one – or two – party system for Nigeria in the belief that such determination should be allowed to evolve rather than emerge through legislation. However, President Babangida forbade the 1988 Constituent Assembly from indulging itself in the fruitless exercise of trying to alter the two-party system. Such a system is desirable in a democracy, but it is more democratic to allow the parties to evolve rather than imposing them on the nation --- as Babangida did. This one prescription, perhaps more than any other, set the stage for future stultification of the political evolution of Nigeria. The objective to break the North/South dichotomy, as well as ethnic orientation in party formation is noble enough. However, the reality of the Nigerian experience leads to the conclusion that Babangida unwittingly created a political monster.

### *Summary*

Political parties in Nigeria do not measure up to some accepted criteria. They are overwhelmingly influenced by factors of ethnicity. From 1979 – 1983, the major parties were National Party of Nigeria (NPN), which drew its strength from the North, the United Party of Nigeria (UPN) was of Yoruba extraction, National People's Party (NPP) was eastern Nigerian based. To the political parties, their ethnic interest came before the national interest. Nigerian minority ethnic groups share their loyalties amongst these major political parties. The Constituent Assemblies in 1978, 1988 and 1994 respectively had both elected and nominated members, thereby perpetuating the dominance of the major ethnic groupings. The Political Bureau sought for a rational political party arrangement but this proved elusive. Nigerians favoured multi-party system that evolved into a two party system. The Federal Electoral Commission organized what would be rated free and fair election but this was not to be. General Babangida forced a two-party system on Nigeria.

In the final analysis the elections failed to produce the fairness and freedom needed in the Nigerian Political System. It was under Babangida's two-party system that the June 12 elections were annulled. Nigeria was thereby denied a free and fairly elected President. The next chapter focuses on several special political issues that any viable and durable constitution for Nigeria must address.

## CHAPTER IV

### SPECIAL ISSUES IN NIGERIAN POLITICS

#### *Introduction*

This chapter focuses on core (special) issues in contemporary Nigerian politics. These issues have been at the heart of deliberations over constitutional provisions. The constitutional development of Nigeria has been plagued by peculiar problems, particularly since independence when she was bequeathed a “dependency” constitution by her colonial master – Great Britain. It was a take-it-or-leave-it constitution. Nigeria subsequently gave herself a constitution through the military “command” constitutions in 1979, 1989 and 1995 that did not adequately address fundamental issues and concerns that could lead to the disintegration of the country. What makes the Nigerian situation more peculiar is the intransigence of the Nigerian political actors over constitutional deliberations to date. People take positions on vital national issues and are not prepared to give in to other viewpoints.

Compromises are hard to come by, since the issues are mostly shaped by ethnic interests.

This chapter examines the following special issues and concerns:

1. The state and religion

2. The economy – revenue allocation and derivation 1960 – 1995<sup>1</sup>
3. The minority issue of under-representation at the federal level of government.
4. State and local government creation.
5. The politics of national census and constitutional deliberations
6. Gender and Nigerian politics

### *Religion and Politics in Nigeria*

There are three identifiable kinds of religions in Nigeria: Christianity, Islam, and African traditional faiths. The latter have remained placid and peaceful, but the first two are the problem groups.

During the 1986 public hearing on state and religion, the Political Bureau noted (and the present study's findings confirm) that there still remain sharp differences of opinion about the place of religion in Nigeria's constitutional arrangement.<sup>2</sup> The question of the admission of Nigeria into the Organization of Islam Conference (OIC) which was current in 1986 generated a lot of political heat. In fact, the demand for a confederal arrangement, as opposed to the existing federal structure of the country, was based on the belief of those interviewed that religious and cultural differences lay at the center of the problems. The views of the two groups are summarized below.

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<sup>1</sup>Text of a World Press Conference Organised by Delegates from The South-South Geo-Political Zone, *Where We Stand*" (Port Harcourt, Nigeria: World Press, 2005), 23.

<sup>2</sup>*Report of the Political Bureau*, 187.

The Christians generally felt that the state should not be involved in religious matters, and that Nigeria should not be a member of the OIC. Missionary schools that were taken over by the government should be returned to their proprietors so that ethical and moral values could be properly taught to Nigerian children. Furthermore, the government should not fund pilgrimage exercises.

According to the Muslims, there could be no real separation of state and religion, and the admission of Nigerian into the OIC should not be viewed as favoring Muslims only. This view pointed out that other non-Muslim African countries were full members of the OIC. Sharia Courts should be established where there was a demand for them. They expressed fervent demands that there should be a Sharia Court of Appeal. They felt that the government should continue to be involved in pilgrimages in order to alleviate the sufferings of pilgrims abroad. In the same vein, Nigerian diplomatic representation at the Vatican should be terminated, as an Ambassador residing in Rome is also accredited to Italy.

Of all the issues raised by both Muslims and Christians, the one that continues to threaten the constitutional foundation of Nigeria is Sharia. It has been designated as an issue that has generated more “heat than light” for a long time in our national history.<sup>3</sup> During the 1978 Constituent Assembly debates, a large number of Muslims staged a walkout from the proceedings for a number of weeks over the non-inclusion of Sharia Court of Appeal at the federal level in the constitution. What was the status of the Sharia Court under the 1963 and 1979 constitutions?

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<sup>3</sup>Ibid.



At the time of the Constituent Assembly deliberations in 1978, Nigeria had no place for a Sharia Court of Appeal at the Federal level. The Constituent Assembly deliberated on the Draft Constitution submitted by the CDC, which was established in 1976. The draft stipulated in Article 254(1) that any State could request a Sharia Court of Appeal, and, as stated in Article 258:

The Sharia Court of Appeal shall exercise the jurisdiction vested in it by this constitution or by any law in accordance with the practice and procedure from time to time presented by a Law of the House of Assembly of the State.<sup>4</sup>

In effect, the Sharia Court of Appeal remained a state matter, as had been the case under the 1963 constitution. However, during the 1978 Constituent assembly debate, a large number of Muslim members walked out of the proceedings for a number of weeks over the non-inclusion of the Sharia Court of Appeal at the Federal level in the Constitution.<sup>5</sup> The Muslim and Christian groups were adamant in their positions to the extent that the whole exercise of fashioning a Constitution acceptable to all Nigerian citizens almost came to a standstill. Some members of the northern intelligentsia argued that for a Muslim to live in secular state could be an abomination.<sup>6</sup>

The CDC hammered out a compromise by accepting a proposal for a Federal Sharia Court of Appeal. On the floor of the Constituent Assembly, the compromise was rejected by the Southerners. Eighty-seven members of the

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<sup>4</sup>Article 258 of 1976 Constitution.

<sup>5</sup>Billy Dudley, *An Introduction to Nigerian Government and Politics* (Wilmington, In: Indiana University Press, 1982), 163.

<sup>6</sup>Ibid.

Constituent Assembly staged a walkout from the Assembly's deliberations. It is significant that this boycott was led by Shehu Shagari, who later became the Second Republic President.

Another aspect of the walkout was that only Muslims from the North took part. *West Africa* noted that the withdrawal was to protest against what it described as the cavalier manner in which the issue of the establishment of the Federal Sharia Court of Appeal proposal in the Draft Constitution was resolved.<sup>7</sup> The debate on the floor of Assembly evoked a wide range of reactions, from appeal for reason to inferences of whipping up emotions. Alhaji T. Mohammed (Gboko, Northern Nigeria), issued a warning:

In spite of the mover's speech on the Sharia Court of Appeal or the Sharia Law, that is the Muslim Personal Law, it seems to me that this Assembly is going to engage in unnecessary and fruitless debate on the provisions now drafted. I have already heard two moving speeches which I do not quite think have been carefully thought out. One member talked about the charade of fears or psychology of fears; fears of whom? Islamic Law is for Muslims. If you are not a Muslim, nobody will ask you to go to the Sharia Court. Where is the fear? Then the other person said the whole provision about Sharia should be wiped out. If that is his idea, then all the Muslims in this country should be wiped out too.<sup>8</sup>

Iyorchia Demei asked some questions: "If there is a Federal Court of Appeal, why not a Federal Supreme Sharia Court of Appeal? Why subordinate the Sharia Law to the Common Law."<sup>9</sup>

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<sup>7</sup>"Walk-out Protest over Sharia," *West Africa*, April 17, 1978, 782.

<sup>8</sup>"Debate on Presidency, Sharia Court," *Daily Star*, November 21, 1977, 1.

<sup>9</sup>Iyorchia Demei, *The Task of the Constituent Assembly* (Abuja, Nigeria, January 1977).

Obasanjo quickly intervened to save the country from yet another political crisis. He gave a timely warning:

Apparently actions and utterances of some members inside and outside the Assembly are pointing in the direction of the political history of the past seventeen years repeating itself.... You must continue to bring adequate tolerance, maturity, and accommodation to bear on your deliberations... Members must not disappoint the nation and must remember their actions and utterances have direct effect on the task of fashioning a workable Constitution. The Federal Military Government deliberately devised a system that would ensure that capable and mature Nigerians are elected and are selected to bring about such a document.... By your actions, attitudes and utterances, some of you have either failed to sufficiently appreciate the consequences of promoting divisions in this country or lack the will, the experience, the wherewithal of a good statesman rather than a politician. Personal feelings and sectional interests should not override the need to fashion a Constitution that will be flexible and workable as well as guarantee the existence of our great nation.<sup>10</sup>

History was to repeat itself on the floor of the 1988 Constituent Assembly when the issue of a Federal Sharia Court of Appeal came up for debate. Once more, the debate generated ethnic sentiments.

Professor Iya Abubarkar, Vice Chancellor of Ahmadu Bello University (Zaria), took the floor on the Sharia issue:

We are all witness to the fact that, once the draft Constitution was thrown open to public debate, over one year ago, the question of Sharia dominated the scene. Many extreme views have been expressed on this issue, from scrapping of the Sharia Courts to the establishment of a Supreme Court for Sharia and widening their powers so that they can exercise it on all civil matters.

Reaction as to what will happen when the issue is finally decided upon ranged from the extreme case of the prophet of doom who predicts war if the Sharia Court of Appeal is established at the

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<sup>10</sup>“Obasanjo Warning to Assembly Members,” *West Africa*, April 24, 1988, 777.

Federal level to uneasy silence as to what will happen if Sharia is not recognized.

There is nothing which touches the hearts of the majority of the population of the people in this country more than the judicial system which governs their day-to-day affairs. The question of their marriages, the question of their inheritance, and the question of their properties, land and so on.

Now in this country we have a population of Muslims which ranges from 45 percent to 65 percent depending on whom you are talking with. But whatever the figure ... there is one point that nobody can dispute and that is, that of all religious groups in this country, the Muslim group is the largest as of today, so the constitution of this country, if it is to be meaningful and relevant, has to take cognizance of the desires and wishes of these people in a matter that personally touches them.<sup>11</sup>

Odade Ede (Benue, Northern Nigeria) was not impressed by Abubakar's statistics. He attacked the Sharia idea, saying it was baseless. He pointed out that 80 percent of the people in his State, Benue, were non-Muslim, just as 60 percent and 50 percent in the states of Plateau and Gongola, respectively, were of other religious bodies. In Kaduna, he emphasized, 40 percent of the population was non-Muslim, and the same percentage applied to Bauchi State. He asked: "Where is the claim of majority which members who talked of Sharia argue about?"<sup>12</sup> The war of words on the Assembly floor was an eloquent testimony to the fact that the Assembly had forgotten or ignored their terms of reference handed down by Babangida himself. Babangida's inaugural address to the members of the Constituent Assembly read in part:

I should also state categorically that the Assembly should not indulge in the fruitless exercise of trying to alter the agreed

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<sup>11</sup>Iya Abubakar, "In Support of Sharia," *New Nigeria*, November 11, 1977, 10.

<sup>12</sup>Ibid.

ingredients of Nigeria's political order such as Federalism, Presidentialism, and the non-adoption of any religion as State Religion, and the respect and observance of fundamental human rights.<sup>13</sup>

If members of the Assembly had any doubts as to the measure of this assignment, Babangida, as mentioned above, came down hard on them in an attempt to wake them to their responsibilities. Vice-Admiral Aikhomu, the Chief of General Staff, issued a warning in an address to the Constituent Assembly:

However, from the ongoing debates in the Assembly on some of the sensitive issues which require a matured approach, this administration is not satisfied that sufficient heed is given to the advice of Mr. President at the inauguration of the Assembly, on the need to avoid engaging in the fruitless exercise of trying to alter the agreed ingredients of Nigerians' political order. If you had followed this fundamental guiding principle, you would have avoided the present impasse in Sharia ... and thereby spared the nation the anxiety which now prevails.<sup>14</sup>

With well-measured words, the Chairman of the Constituent Assembly, a retired Justice of the Supreme Court, replied,

The members of this Assembly have taken note of jurisdiction and the person who is a recipient of jurisdiction cannot be greater than the donor of the jurisdiction.<sup>15</sup>

Articles 240 – 244 of the 1979 Constitution, which stated that there should be a Sharia Court of Appeal for any state that requires it, were consigned to no-go- area and their place assured in the 1989 Constitution Articles 259 – 263.<sup>16</sup>

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<sup>13</sup>*Report of the Proceedings of the Constituent Assembly – 1988 – 1989*, vol. 1, iv.

<sup>14</sup>*Ibid.*, xi.

<sup>15</sup>*Ibid.*

<sup>16</sup>*Ibid.*

Several questions now arise: Has the entrenchment of Sharia in the Constitution created the incidences of religious, bloody conflict in our body politics? Has Article 11 (non-adoption of state religion) put an end to the religious conflicts? Is Article 37 (right to freedom of religion) redundant? What impact does the Constituent Assembly have on these matters? These are issues that will be addressed later in this discussion.

### *The Politics of Resource Control and Allocation*

The issue of Resource Control falls under the fundamental objectives and directives principles of state policy. It came before the CDC on the recommendations of minority members of the Subcommittee on Fundamental Objectives. The Article reads as follows:

Within the context of a participatory democracy informed by the ideas of liberty, equity, and justice, the State shall as a long-term goal strive towards a socialist order based on public ownership and control of the means of production and distribution.<sup>17</sup>

However, the Article as adopted which emphasizes “control by State of major Sectors,” will only transfer control of the economy from foreign multinational corporations to domination by the elite. Economic power should be wrested from a new hand or a single group. Equally important, there should be a population of moderately wealthy people, a middle class, which should be in the majority. There should be no extremes of poverty or wealth. Furthermore, there should be an economy that is open and participatory. In other words, there should

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<sup>17</sup>*Report of the Constitution Drafting Committee* (Lagos, Nigeria: Federal Ministry of Information, 1975), xiii. (This report contains the Draft Constitution).

be opportunities for public and private enterprises to cooperate in harnessing the productive resources of the Republic. As Karl Marx clearly demonstrated; “Social life – including politics – is determined primarily by social production, what is produced, how it is produced, and how what is produced is distributed.”<sup>18</sup>

The 1988 Constituent Assembly adopted Article 16 of the 1979 Constitution. It then entrenched it in Article 17 of the 1989 Constitution under the caption, “Economic Objectives.”

#### Land Use

Land is the most important means of production in agriculture. Nigeria is essentially an agricultural country. How did the two Constituent Assemblies impact on this critical resource in the country’s economy? The importance of land drove Jean-Jacques Rousseau, in his second discourse in *The Origin of Inequality* of 1755, to perceive private property as the most fundamental of all institutions which enshrine the principle of inequality. He expressed his sentiments in the following lines: “The first man, who enclosed a piece of ground, and found people simple enough to believe him, was the real founder of civil society.”<sup>19</sup>

All the crimes of humanity, he argued, were due ultimately to the appropriation of the earth by some individuals at expense of others, with the poor forced either to become indebted to the rich or to plunder their property. However, not only was the institution of private property responsible for the emergence of

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<sup>18</sup> Karl Marx, *Contribution to the Critique of Political Economy* (London: International Liberal Publishing Co., 1904), preface.

<sup>19</sup> Jean-Jacques Rousseau, quoted in *Political Ideas and Ideologies: A History of Political Thought*, Mulford Q. Sibley (New York: Harper & Row, Publishers, Inc., 1970) 395.

war, but it must also have accounted for the establishment of government, with the rich eventually traducing the poor to settle their differences.

According to Rousseau, government must initially have been set up as a kind of fraudulent social compact which bound all men to maintain the peace by repudiating their claim upon one another's property. As all individuals were protected only in the legitimate possession of what they owned already, the poor would thus have come to be permanently subjected to the rich, running headlong into their claims in the belief that they had gained their freedom.

These are not just sentiments. They actualize the Nigerian societal realities. What, then, was the government's policy on land? In 1978, the military government initiated what they termed a government policy on land. It was embodied in the Land Use Decree which was later entrenched in the 1979 Constitution.

The Decree or Act of 1978 on Land Use vested all land comprised in the territory of each state in the federation in the military governor of that state, who would hold such land in trust and administer it for the "use and common benefit of all Nigerians." By extension, the civilian governor stepped into the shoes of the military governor.

The most controversial provision of the Decree was the power appropriately invested in the Governor to revoke the occupier's right to occupancy for "overriding public interest." This represented a dangerous situation. A vengeful Governor would interpret "overriding interest" to suit his whims and caprices. His party men might be protected, while the opposing party members would bear the



political brunt of the Governor. The Land Use Law left power over a constant, fixed element of production – Land – open to possible abuse by disputes.<sup>20</sup>

However, in Nigeria land has traditionally belonged to communities with the eldest man holding it in trust for the community. This has remained the practice, for example, in some areas of Rivers State (Etche, Ikwerre, Ekpeye, and others). A governor cannot afford to disregard this sacred trust and impose his will on community land in the rural areas. However, a governor may approve the Certificate of Occupancy of his party men and withhold that of rival party members.

On the economy in general, Babangida blamed the poor economy on all Nigerians, not just on politicians as had been his style. He stated that all Nigerians were to blame for the nation's economic predicament. However, he heaped greater blame on the elite, who, he said, cut across the various segments of the society. He added that the nation's entire orientation needed to change:

So, unless we are able to accept the fact that the destiny of this country is in our hands and either we make it or mar it, and since we agreed we are going to make it, then we might as well pull up and get ourselves ready. So I think I would blame virtually everybody, the leadership, the follower-ship.<sup>21</sup>

This is a more sober reflection on the economic plight of the country than the blame Babangida heaped on politicians of the Second Republic, who he claimed had improved on the vices of those in the First Republic and plundered the

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<sup>20</sup>Arthur Nwankwo, *Thoughts on Nigeria* (Enugu, Nigeria: Fourth Dimension 1986), 102.

<sup>21</sup>*New Nigeria*, April 15, 1993, 1.

economy ruthlessly. In his inaugural speech to the Political Bureau on January 13, 1986, Babangida stated:

....our present economic predicament can be attributed, in part, to the increasing cynicism and apathy of individuals, economic mismanagement, as well as the apparent social chaos and disorder in our society. It has also adversely affected our capacity, as a nation, to realize our vast economic potentials.<sup>22</sup>

### Revenue Allocation

Revenue allocation, or the statutory distribution of revenue from the Federal Account, among the different levels of government has been one of the most contentious and controversial issues in the nation's political life. None of the formulas evolved at various times by Commissions or by Decree since 1964 has gained general acceptance as a revenue formula, and each is remembered for controversy rather than settlement.

The political history of revenue allocation dates from the amalgamation of Nigeria by the British in 1914. The British needed to subsidize the huge cost of administering the vast northern protectorates from resources of the relatively richer southern region of Nigeria. The British financed and administered the country mainly with the proceeds from the palm oil trade flourishing in the eastern region. At that time, using the derivation formula was not given serious consideration. When groundnuts from the North and Cocoa from the West became major sources of revenue, derivation was catapulted into a major criterion for allocation. With the discovery of petroleum at Oloibiri (Rivers State) and other areas of the East, derivation was once more de-emphasized in an effort to frustrate the oil producing

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<sup>22</sup>*Report of Political Bureau, 229.*

areas. Dichotomy between onshore and offshore oil was introduced at the end of Nigeria's civil war. This device was calculated to deprive the oil-producing states of additional revenue.

The Distributable Pool Account was the account where all revenues which were to be shared by all the states were paid. The proportion of distribution of this money varied from time to time. For instance in 1958 it was shared in the ratio of 40% to the North, 24% to the West and 31% to the East. Under the 1979 Constitution, the Distributable Pool Account is called The Federation Account into which all the revenues collected by the Federal government (with a few exceptions) are paid. The amount in this account is distributed among the Federal, State, and Local governments and councils in accordance with the prescription of the National Assembly. In 1982<sup>23</sup> this was the distribution:

Basic Allocations:

Federal government	55.00%
State government	32.00%
Local government	10.00%
Fund for the Development of Mineral Producing areas	1.50%
Fund for Amelioration of Ecological Problems in the Mineral Producing States	2.00%

Criteria for Distribution of Funds to States

Equality of States	40.00%
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<sup>23</sup>Ibid., 170.

Population	40.00%
Direct Primary School Enrollment	11.25%
Inverse Primary School Enrollment	3.75%
Internal Revenue efforts	5.00%

Although several alternative formulas were proposed by memoranda from the public, the most consistent was that which advocated the reallocation of revenues so that the federal and local government would get 40 percent and 20 percent, respectively. There was general consensus that the local government should not be allocated less than 20 percent of the total revenue. There was no agreement on the proportion that should be allocated between federal and state government levels.

There were other factors of revenue allocation that continued to agitate the minds of most Nigerians. They argue that there was a crying need to positively review the principle of derivation. In support of this, the following statement was made:

Although in a Federal Structure, better endowed areas should be prepared to sacrifice in order to speed up the development of less naturally endowed ones, the areas from where the resources are extracted suffer ecological disaster which usually imperil their resources of livelihood. These hazards .... are usually localized within the areas of exploitation, and such areas deserve to be better compensated than at present.<sup>24</sup>

It was felt that the population factor should be de-emphasized and that the percentage of revenue allocations to the oil-producing areas of the country were inadequate and should be revised upward. In this regard, there is still a minority

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<sup>24</sup>Ibid., 171.

opinion that calls for the downward revision of the present 3 percent allocation to this sector.

The oil-producing areas of the Ogoni people (self-styled Ogoni Kingdom) have internationalized the wanton neglect of the federal government toward their ecological problems. The focus has even shifted to the “Nigerian question” and demands by Ogonis for a separate country or at least, a Nigerian confederation. This shall be dealt with in greater detail in Chapter VI.

This study now focuses on the place of revenue allocations under the 1963, 1979, 1989 and 1995 Constitutions. It addresses the role of the Constituent Assemblies in the revenue allocation question.

*Revenue Allocations and the Constitutions: The 1963 Constitution*

Article 134(1) – There shall be paid from the Federation to each region a sum equal to fifty percent of

- a. The proceeds of any royalty received by the Federation in respect of any mineral extracted in the region and
- b. Any mining rents derived by the Federation during that year from within that region.

Article 145(5) included mineral oil in the section on minerals. It must be kept in mind that the main mineral produced in Nigeria at the time was tin from the North and less importantly, coal from the East (which was not used for export earnings).

The CDC Report which preceded the Constituent Assembly of 1978 made the following recommendations, and the subcommittee on the economy noted the following changes since 1963 Constitution:

- a. Excise Duties: since 1975 (by Decree No.16) 50 percent of all excise duties go to the Federal and 50 percent to the State Government.
- b. Mining Rents and Royalties: 20 percent of onshore receipts go to the State and 80 percent to the Distributable Pool Account, while 100 percent of the offshore go to the Distributable Pool Account.

Since 1970, the formula for sharing the revenues among the States had been radically simplified, so that 50 percent of the Distributable Pool Account fund went to the States on the basis of equality of States, and 50 percent on the basis of population. The CDC subcommittee recommended that the system of revenue allocations be continued until the end of the Third National Plan period, and the institution of a formula that took into account the aspects of population, equality of States, derivation, and geographical area. It called for continuous review of the situation with respect to revenue allocations.<sup>25</sup>

Article 138(2) – The amount standing to the credit of the Distributable Pool Account shall be distributed among the States on such terms and in such manner as may be prescribed by an Act of National Assembly.

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<sup>25</sup>Constitution Drafting Committee, *Report of the Constitution Drafting Committee* (Lagos, Nigeria: Federal Ministry of Information, 1976).

Article 183(3) – Until other provisions are made by the National Assembly pursuant to this section, the provisions contained in the Fifth Schedule to this constitution will apply.

The Fifth Schedule simply stated that the federal military government should convene a conference between the federal government and states to discuss and agree on a new formula for the allocation of revenue between the federation and the States, as well as amount to the States. It is safe to conclude that the CDC Draft Constitution made vague recommendations and merely passed the buck to the 1978 Constituent Assembly. Its work was reflected in the 1979 Constitution.

Article 149(2) – Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State, on such terms and in such manner as may be prescribed by the National Assembly.

For the first time in the checkered history of Revenue Allocation, the local government councils were accommodated as a third-tier government.

The CRC that preceded the CDC reviewed the 1979 Constitution. In the area of Revenue Allocation, the CRC recommended the following:

Section 40 – A permanent Fiscal Review Commission shall be established by the Constitution to keep under constant review the federal fiscal system and the financial relationship between the Federation and the States, among the States, between the States and Local Government Councils within the respective States. The 1989 Constitution made the following provision:

Article 160(2) – Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments, and the Local Government Councils in each State, on such matters as may be prescribed by the National Assembly.<sup>26</sup>

Again the buck was passed to the National Assembly to provide the answer to the conflicting interests of Nigerians on Revenue Allocation.

Revenue Allocation eventually came to be tied to the Nigerian Question. Although the National Assembly did not come out with the anticipated formula on Revenue Allocation, the Report of the Political Bureau made very useful recommendations to guide the CRC and the Constituent Assembly, and indeed the National Assembly, in arriving at an acceptable formula. The Bureau felt that a higher percentage of revenue from the Federation Account than the current 10 percent should be allocated to Local Governments, and recommended 20 percent. Revenue from the Federation Account should continue to be allocated to the States based on the existing principles illustrated above. The dichotomy between onshore and offshore in the allocation due to the oil-producing states should be abolished, as it disregarded the hazards faced by the inhabitants of areas of offshore oil production. This paper takes the position that the dichotomy was merely a political ploy to rob offshore oil-producing areas on the basis of derivation. Furthermore, for reasons of fair compensation for environmental damage and economic loss, the present 1.5 percent allocated from the Federal Account for the development of mineral-

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<sup>26</sup>Constitution Review Committee, *Report of the Constitution Review Committee* (Lagos, Nigeria: Federal Government Printers, 1988).



producing areas should be increased to at least 2 percent. The Bureau specified that the 2 percent from the Distributive Pool given to oil-producing states should be sent directly to the local government areas which produce the oil.<sup>27</sup>

The National Revenue and Fiscal Commission was established to monitor the accounts and disbursements of revenue from the Federation Account. It would review from time to time the revenue allocation formulas and principles to conform to changing realities. The Babangida regime implemented some of the recommendations, even when the 1978 and 1988 Constituent Assemblies did not tackle the ever-present ecological problems that plagued the oil-producing areas. In 1992, Babangida revised upward to 3 percent the 1.5 percent allocated from the Federation Account for the development of oil- and mineral-producing Areas Commission under Decree No. 23 of 1992. The Commission would embark upon physical and human development in the oil-producing communities, with the following objectives:

- a. Compensate materially the communities, local government areas, and states which have suffered damage (ecological, environmental etc.) or deprivation as a result of mineral oil prospecting in their areas.
- b. Open up the affected areas and effectively link them up socially and economically with the rest of the country by producing various forms of infrastructural and physical development.

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<sup>27</sup>*Report of Political Bureau, 170-171.*

- c. The 3 percent Fund is for the development, by the Federal Government, of oil-producing communities, not for states and local governments.

There was the question of distributing the monies involved to the state governments for disbursement, or to have state government agencies administer the monies on their own. The principle behind this concept was to free the funds from partisan political control.<sup>28</sup> This 1995 Constitution revised the upwards the fund due to the mineral producing areas, to not less than thirteen percent (13%).

### *The Creation of States*

State agitation continued to occupy a prime position in the Nigerian political agenda just before Nigeria's independence from Britain. This agitation stemmed from the fears, on the part of minority ethnic groups, of domination by the major ethnic groups: Ibos, Yorubas, Hausa-Fulanis. This led to the setting up of the Willink Commission of 1954, which investigated the plight of the Niger Delta area. The Willink Commission recommended the creation of a board to develop the Niger Delta basin as a special area, but was against state creation. By the outbreak of the Nigerian civil war, the agitation for the creation of states had been recognized as the only means of correcting the imbalance in the federal structure, which made further political crises inevitable.

On May 28, 1967, the military regime of General Gowon created twelve states as part of the strategy against the secession of Biafra. There was another rationale to the exercise. It claimed to have broken up the old regions of the East,

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<sup>28</sup>Ibid.

West, Midwest, and North. By 1974, the agitation for new states had gathered momentum, and the Gowon administration expressed its commitment to the creation of new states as part of the transition program toward military disengagement from politics. This led to the creation of the Justice Iriekefe Panel for the creation of more states and for boundary adjustment. The panel noted that the creation of more states would remove the minorities' fears of domination.

... the 12 States structure which came into force in 1967 did not adequately satisfy the expectation of Nigerians. The experience of the Second Republic proved clearly that State creation was still high on the agenda of Nigerian politics. So persistent and vocal were the calls for review of the issue that they tended to drown all other matters. On the eve of the collapse of the Second Republic, about thirty-eight requests for the creation of additional States had been received and processed by the National Assembly. The Conference Committee of the National Assembly subsequently recommended fifteen (15) of these for referenda.<sup>29</sup>  
(See Map - Appendix)

On the issue of state creation, it must be recalled that Murtala Mohammed, head of the Federal Military Government, declared in his address to the opening session of the 1976 CDC:

This Administration believes strongly that the provision of the constitution can be used for removing or minimizing some of our basic problems. The fear of the predominance of one region over another has, for instance, been removed to a large extent by the simple Constitutional Act of creating States. Your aim, therefore, must be to devise a Constitution which will help to solve other problems that may arise in the future.<sup>30</sup>

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<sup>29</sup>*Report of the Political Bureau*, 173-74.

<sup>30</sup>*Report of the Proceedings of the Constituent Assembly – 1988 – 1989*, vol. 1, xli.

It should be pointed out here that the creation of nineteen states was by Decree and not by a Constitutional Act. Under its fundamental objectives, the CDC stated the following:

Article 3(c) – The domination of the government by one State or ethnic grouping or combination of them shall be avoided; also, the affairs of the State shall be conducted so as to ensure that the component States and ethnic groupings are accorded equal treatment, but without prejudice to special safeguards designed to protect the position of minority groups.

Fundamental Objectives are mere declarations that are not enforceable in law courts. However, strength was given to the declaration of states in Article 3 of the 1979 Constitution, in which the nineteen states of the federation were enumerated.

The 1979 Constitution made provisions on new states:

Article 8(1) – An Act of the National Assembly for the purpose of creating a new State shall only be passed if:

- a. Request, supported by at least two-third majority of members (representing the area demanding the creation of the new State) in each of the following, namely:
  - i. The Senate and House of Representatives,
  - ii. The House of Assembly in respect of the area,
  - iii. The local government council in respect of the area,
 is received by the National Assembly;
- b. A proposal for the creation of the State is thereafter approved in a referendum by at least two-third majority of the area where the demand for creation of the state originated;
- c. The result of the referendum is then approved by a simple majority of members of the House of Assembly; and
- d. The proposal is approved by a resolution passed by two-third majority of members of the House of the national Assembly.

The foregoing provision under Nigerian political realities may never be realized. Therefore, the creation of additional states under these circumstances seems farfetched. It would be as difficult as amending a contentious provision in the Constitution.

The CRC (1987) and the Constituent Assembly of 1988 will now be examined in the context of whether or not they improved the chances of creating new States in Nigeria.

The subcommittee of the CRC stated that the subcommittee unanimously decided to leave Article 8 of the 1979 Constitution as it is with no modifications, to forestall too many unnecessary demands for the creation of more states, yet remain flexible enough to allow for the genuine demands to be made and possibly satisfied. The CRC endorsed the subcommittee recommendations. Likewise, the 1988 Constituent assembly under Article 9 reproduced the same provisions as in Article 8 of the 1979 Constitution. The 1988 Constituent Assembly had no choice but to adopt the 1979 constitutional provisions as was the case with the 1995 Constitution.<sup>31</sup>

As noted previously, (and repeated here to complete this chronology) in his address to the members of the Constituent Assembly, Babangida warned that, “The Constituent Assembly does not possess the power to create States or alter State or Local Government boundaries.”<sup>32</sup> It was Babangida himself who, by Decree,

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<sup>31</sup>Ibid. iv.

<sup>32</sup>Ibid.

created more states and brought the number in Nigeria first to twenty-one and then to thirty (see Appendix A). While announcing the creation of two more States (Akwa Ibom and Katsina), Babangida stated in 1987 that this would be the last exercise in the creation of States by his administration. However, four years later, in August 1991, he created nine more states. He explained that there was much pressure by the people on the government to create more states.

Osifo Whiskey declared: “More States are coming. For those demanding them, it is no longer a question .... When they are confident that President Babangida will give them what they want.”<sup>33</sup> The significant point here is that the creation of States in Nigeria had been carried out only by military administrations. This underscores the point made earlier in this study about the near impossibility of creating states through the provisions of Nigeria’s constitutions.

In its editorial, the *Daily Sunray* issued a warning:

Unless the federal government just wants to satisfy those who have access to it and who know how to lobby, there is absolutely no good reason for creation of new states. [The demand] can be contained when statesmen replace opportunists and politicians in government. Until equity is more or less restored in relations between groups, the urge for creation of new administrative structures will be there.<sup>34</sup>

Certainly, until those who create states by fiat heed this warning, the demand for new states will continue until every ethnic group in Nigeria is rewarded with a state. There are over 200 such groups.

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<sup>33</sup>Whiskey, “More States are Coming,” 10.

<sup>34</sup>“State Creation,” *Daily Sunray*, June 3, 1993, 1.

*The National Census and Constitutional Deliberations*

The national census is another special issue in Nigerian Politics that should be addressed. Since independence in 1960, the country has made three attempts to get an accurate census. In 1963, the civilians were successful; in 1973 the military failed; and the third census exercise in 1991 by the military is yet to be ratified. By then, it was expected that the ratified final figures might be ready on August 27, 1993, before the military finally disengaged from politics. The provisional figures of over 81 million were greeted with derision and cynicism. The failure of Nigeria to conduct a successful census impeded meaningful development of the country. It was generally agreed that the major reason for the failure to conduct a successful census was the linkage between it, revenue allocations, and political representation.

*The Report* of the Political Bureau stated that:

Such a linkage tends to encourage the inflation of census figures by all political groups in the country who see clearly the benefit to be derived from such manipulation.<sup>35</sup>

The census matter touches the core of the National Question, which is yet to be resolved. The polarization of the nation by ethnicity and religion is part of the same political equation. The Vice-Chancellor of Ahmadu Bello University placed emphasis on population in the debate on the floor of the 1988 Constituent Assembly, indicating a Muslim population of between 45% to 65% of the national population.<sup>36</sup> It is pertinent to point out here that a population gap of 45 to 65 percent is enormous indeed. This vague estimation smacks of the failure of the

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<sup>35</sup>*Report of the Political Bureau*, 166.

<sup>36</sup>Abubaker, "In Support of Sharia," 10

census exercise. In fact, the one point nobody can dispute is that there are no accurate figures.

The Political Bureau report and the result of this study's research interviews indicate that previous attempts at population counts failed due to several factors. The plurality of ethnic groups in this country encourages manipulation of census figures to score a political advantage. The socioeconomic backwardness and over dependence on the federal government for resources accentuates the contest for power at the center. Nigerian political history confirms that any ethnic group in power at the center bends backward to protect the interests of its group to the neglect of others. Population as a major factor for revenue allocation is also a critical factor for delimitation of constituencies for representation in government. A deleterious aspect is the absence of an autonomous body charged with the responsibility of conducting the census and determining the outcome without ratification or acceptance by politicians.

The 1973 figures were virtually laughed out of court, as they were ridiculously inflated. In his address to the opening session of the CDC on August 18, 1975, General Murtala Muhammed had this to say about the census:

Considering our past difficulties over population counts, we should endeavor to devise measures which will have the effect of depoliticizing population census in the country, which as we all know, has caused interminable dispute at home and grave embarrassment elsewhere.<sup>37</sup>

The CDC subcommittee took the following decisions, which were submitted to the CDC:

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<sup>37</sup>*Report of the Constitution Drafting Committee*, vol. 1, xlii.



- i. There shall be established under the constitution a National Population Commission with a membership of not less than seven but not more than nine.
- ii. The members shall be nominated by the President and confirmed by the Senate.
- iii. The Commission shall not be subject to the direction and control of any other person or authority.
  - a. In deciding whether or not to accept or revise the return of any office of the Commission concerning the return of population census in any part of Nigeria.
  - b. In carrying out the operation of conducting the census;
  - c. In compiling its report of national census for publication.
- iv.
  - a. Census Report shall be submitted to the President, who shall present it before the National Council of States within 30 days of submission. The decision of the Council of States shall be binding on the President and the figures shall be published as soon as the Council of States has taken a decision.
  - b. If they are rejected by the Council on ground of demonstrable perversity or gross manifest inaccuracies, the offices of the chairman and the members of the commission will become vacant with effect from the date of such rejection.

c. In either case of acceptance or rejection of census figures, the National Assembly is merely to be informed to pass the necessary legislation without any debate.<sup>38</sup>

The CDC accepted the decision of its subcommittee, which stated that Section 128 (11) of its Draft Constitution provided for the establishment of a National Population Census Commission. It continued that Section 128(2) provided that the NPC should not be subject to the direction or control of any other person or authority, as in the subcommittee decision.

The 1978 Constituent Assembly adopted the work of the CDC. Accordingly, the provisions were entrenched in the 1979 Constitution under Article 140, which gave the Commission control over its operations. Section (1) provided for the establishment, among others, of a National Population Commission. Section (2) stated that the Commission would not be subject to the direction or control of any other person or authority, etc. However, Article 193 required the Commission to submit its report to the President. His rejection of the report on the advice of the Council of States completely negated the independence and autonomy of the commission. Its autonomy was further undermined by Article 144 (3):

Article 144 (3) – All members of the National Census Commission shall cease to be members if the President declares a National Census Report as unrealistic and the report is rejected in accordance with Article 193.

In Article 193 (4), the Council of States advises the President to reject the report on the following grounds:

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<sup>38</sup>Ibid., 167.

- a. .... If the population census contained in the report is inaccurate, or:
- b. if the report is perverse, the President shall reject the report accordingly and no reliance shall be placed upon any such report by any authority or person or for any purpose whatsoever.

The CRC provided, in its Section 151 (1) (h), for the establishment of the Census Population Commission.

Furthermore:

Section 155 (3) – The Chairman and members of the National Population Commission shall cease to hold their offices if the President declares a National Census report unreliable and the report is rejected in accordance with Section 206 (5).

Section 206 (5) contained the same wording as Article 193 (4) quoted above. In fact, the Constituent Assembly 1988 merely rubber-stamped the report of the CRC under Article 151 concerning the establishment of National Population Commission, and Article 155 (2) which urged the removal of the Chairman and members of the Commission by the President. In the Third Schedule, part 1 of the 1989 Constitution, Section 21 (1) lists the membership of the Commission, while Section 22 enumerates its powers.

The delicate and important issue of complete autonomy of the Commission was not broached. As a result, the attempt at census exercise in 1991 was unsuccessful. The breakdown of the figure generated sharp interest among the ethnic groups, although the familiar scenario unfolded as the final figures remained within the files of Babangida. The provisional results are shown on Table 1.

TABLE 1. *THE FEDERAL REPUBLIC OF NIGERIA 1991 POPULATION  
CENSUS RESULTS (Provisional Results)*

State	Male	Female	Total
Abia	1,100,357	1,189,621	2,289,978
Adamawa	1,084,824	1,039,225	2,124,049
Akwa Ibom	1,162,430	1,197,306	2,359,736
Anambra	1,374,801	1,393,102	2,767,903
Bauchi	2,202,962	2,091,451	4,294,413
Benue	1,385,402	1,394,996	2,780,398
Borno	1,327,311	1,269,278	2,596,589
Cross River	945,270	920,334	1,865,604
Delta	1,273,278	1,296,973	2,570,251
Edo	1,082,718	1,077,130	2,159,848
Enugu	1,482,245	1,679,050	3,161,295
Imo	1,178,031	1,307,468	2,485,499
Jigawa	1,419,726	1,410,203	2,829,929
Kaduna	2,059,382	1,909,870	3,969,252
Kano	2,858,724	2,773,316	5,632,040
Katsina	1,994,218	1,934,126	3,928,344
Kebbi	1,024,334	1,037,892	2,062,226
Kogi	1,055,964	1,043,082	2,099,046
Kwara	790,921	775,548	1,566,469
Lagos	2,999,528	2,686,253	5,685,781
Niger	1,290,720	1,919,647	3,210,367
Ogun	1,144,907	1,193,663	2,338,570
Ondo	1,958,928	1,925,557	3,884,485
Osun	1,079,424	1,123,592	2,203,016
Oyo	1,745,720	1,943,069	3,688,789
Plateau	1,645,730	1,637,974	3,283,704
Rivers	2,079,583	1,904,274	3,983,857
Sokoto	2,158,111	2,234,280	4,392,391
Yobe	754,754	725,836	1,480,590
Abuja (FCT)*	206,535	172,136	378,671
<b>TOTAL</b>	<b>43,866,838</b>	<b>44,206,252</b>	<b>88,073,090</b>

Source: *The Europa World Year Book 1975 (1984 – 85): (1984), 2174, (1985), 2322.*

\*FCT = Federal Capital Territory

(By way of an update, the latest Nigerian population figures, based on the census of 2007, put the number at 140 million.)

### *Gender and Nigerian Politics*

Nigerian women represent about 50 percent of the population. Their number notwithstanding, women have from the colonial era to the present dispensation been marginalized in the political evolution of Nigeria. In its *Report*, the Political Bureau made half-spirited attempts at improving the aspirations of women in politics and government, as highlighted later in this chapter.

Women's agitation in Nigeria for suffrage and equality with men had resulted in the famous (or infamous) women's riot in eastern Nigeria in 1929. The name of Mrs. Margaret Ekpo became synonymous with women's liberation and political emancipation. In more modern times, the Nigerian women who submitted memorandum to the Political Bureau (set up by Babangida) expressed the deep resentment of the subordinate position accorded to women by their male counterparts. They refused to accept such inferior status as a feature of Nigeria's traditional setting. Some of the women drew attention to the pre-colonial era, when women played important political and economic roles. The Lyalodes, the Yalojas, the Omu Society, and the Jakdiyas were cited as examples of women actors in the economic and political life of their various societies. Some women made reference to the legendary Queen Amina of Zaria to buttress their belief in the political potential of Nigeria's women.<sup>39</sup>

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<sup>39</sup> *Report of the Political Bureau*, 157.

Happily enough, however, Nigeria women are not divided on the lines of women of color and white. They can, therefore, fight social and political oppression from a position of togetherness. But this is not the complete story. The educated women behave towards the massive majority of illiterate women in the same contemptuous and condescending manner. Religion is another polarizing factor distancing most women from the northern part of Nigeria from the political activities of their counterparts from the South. The Political Bureau's *Report* states the following:

The decline of women's participation in public and economic affairs has been attributed to contemporary socioeconomic factors rather than to male chauvinism. One organization... saw religion as inhibiting full participation of women in public affairs. Some also argue that some traditional beliefs and cultures discriminate against women's participation in public affairs.<sup>40</sup>

Furthermore, the entrenchment of capitalist relations of production is seen by other women contributors as primarily abetting the decline of the role of women in social and political affairs. The majority of Nigeria women are farmers and housewives who have been marginalized in the process of production, as exemplified by the Marxist attack on capitalism.

#### *Women and Nigeria's Political History*

In his book *The Role of Nigerian Women in Politics: Past and Present*, Patrick K. Uchendu contends that the dependent position of Nigerian women today is a product of a colonial structure that aimed to pattern African women's position on the dependent status of European women. He notes that some of the conflicts

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<sup>40</sup>Ibid.

between women and the colonial authorities arose from the attempt to replace a dual sex political system in which both sexes complemented each other in the political arena, with the familiar colonial single sex political structure with an enviable political strength. Uchendu discusses the current attitude to Igbo, Hausa and Yoruba women in politics as discussed in this present dissertation. It all started at Aba during the Women's Riot, or Aba Riot of 1928. There were similar uprisings in the North and West of Nigeria.<sup>41</sup>

The immediate cause of the Aba Riot was the mistaken belief that the colonial government was ready to tax women. Women believed that chiefs were collaborators with the Europeans towards the project. As the riot grew in intensity, the police were ordered to open fire, that left 30 persons killed and many more wounded. A commission of inquiry was set up to identify the causes of the riot. The major cause was the belief that the government was about to impose tax on women. The report, accepted by the government, blamed the riot on faulty intelligence.<sup>42</sup>

Women in Nigeria have been active in the anti-colonial, nationalist, and post-independence politics. During colonialism Nigerian women protested to get relief for specific grievances related to, for example, taxation and control of markets. Women were also involved in party politics and the nascent legislative bodies; they fought for independence along with men. In post-colonial Nigerian

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<sup>41</sup>Patrick K. Uchendu, *The Role of Nigerian Women in Politics: Past and Present* referenced in D.A. Ityavayar and S.N. Obiajunwa, *The State and Women in Nigeria* (Jos, Nigeria: Jos University Press, 1992), as quoted in Ruby Bell-Gam, and David Uru Iyam, *Nigeria*, Rev. ed. *World Bibliographical Series*, v. 100. (Oxford: Clio Press, 1999), 102.

<sup>42</sup>Ibid.

politics, women have successfully run for elective office, been appointed to administrative posts, and the constitution drafting and review bodies. Nigerian women remain, however, a marginalized political force, underrepresented at all levels of government.<sup>43</sup>

The statistical data provided by women to the Political Bureau revealed that women constituted 52 percent of the agricultural labor force; only 6 percent were literate, and they represented only 0.7 percent of the federal legislature in the Second Republic of 1979 to December 1983. Women represent only about 10 percent of university enrolments.<sup>44</sup>

The federal military administration has taken steps to cushion the oppression meted on women. It has directed that at least one woman be included in all states executive councils. It appears that this provision is too little too late. Women should be encouraged to participate fully in politics, and their sex should not be a badge for oppression.

### *Women and Politics in Comparative Perspective*

It is pertinent to examine the fate of women in politics both within and outside Nigeria. This study will focus on the feminist movements in the U.S., Britain, and Nigeria, and their struggle for enfranchisement. Women all over the world cry out at the oppression of women by men. How did women overcome

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<sup>43</sup>For a concise historical overview of the role of women in Nigerian politics, see Clifford Ndujihe, "The Changing Story of Women in Politics," *The Guardian*, August 5, 2004, 9-10.

<sup>44</sup>Ibid.



racism, ethnicity, and religion that have tended to destabilize the feminist movement?

Betty Friedman's book, *The Feminine Mystique*, is widely believed to have paved the way for contemporary feminist movements. She wrote, "We can no longer ignore that voice within women that says, 'I want something more than my husband, my children, and my house.'" <sup>45</sup> She defined that "more" as careers, but did not discuss who would be called to take care of the children and maintain the house if more women were freed from this labor and given equal access with men to professions. <sup>46</sup>

Friedman ignored the great number of poor white women and all non-white women. Her specific focus was on the problems and dilemmas of the leisure class, where white housewives had real concerns that needed to be addressed. In reality, these were not the pressing political concern of the majority of women. Racism and classism were not given enough attention. It is only by analyzing racism and its function in a capitalist society that a thorough understanding of class relationships can be gained.

On the U.S. feminist movement, polarized on racial lines, bell hooks narrated her experience in the following terms:

When I participated in feminist groups, I found that white women adopted a condescending attitude towards me and other non-white participants. The condescension they directed at black women was

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<sup>45</sup> Betty Friedan, *The Feminine Mystique*, "as quoted in bell hooks, *Feminist Theory from the Margin to Center* (London: South End Press, 1984), 1.

<sup>46</sup> *ibid.*

one of the means they employed to remind us that the woman's movement was "theirs" – that we were able to participate because they allowed, even encouraged it; after all, we were needed to legitimize the process.<sup>47</sup>

The feminist struggle has since been expressed in terms of oppression. The use of this term is important, because it places the feminist struggle within a radical political framework.

Before focusing on women in the Nigeria political scene, mention must be made of the lot of black women in the U.S., as illustrated in the following quote:

As a group, black women are in an unusual position in this society, for not only are we collectively at the bottom of the occupational ladder, but our overall social status is lower than that of any other group. Occupying such a position, we bear the brunt of sexist, racist, and classist oppression. We are allowed no institutionalized "other" that we can exploit or oppress.<sup>48</sup>

White women and black men have it both ways. They can act as oppressors or be oppressed. Black men may be victimized by racism; white women may be victimized by sexism, but racism enables them to act as exploiters and oppressors of black people.<sup>49</sup>

Jaggar<sup>50</sup> notes that the first unmistakable feminist voices were heard in England in the seventeenth century. The Industrial Revolution provided the environment for organized feminism. During this period of political and economic

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<sup>47</sup>Ibid., 11.

<sup>48</sup>Ibid., 14-15.

<sup>49</sup>Ibid.

<sup>50</sup> Allison M. Jaggar, *Feminist Politics and Human Nature* (Sussex, England: Harvest Press, 1981).

transformation, industrial capitalism was beginning to develop. Britain, France, and the U.S. were adopting political systems of representative democracy. These economic and political changes drastically altered women's situations and how they perceived those situations. Much of this alteration came as a result of the transformation in the economic and political significance of the family.

The new democratic ideals of equality and individual autonomy provided assumptions of women's natural subordination to men. Women became what Marxists called "a question."<sup>51</sup> The question concerned the proper place of women in the new industrial society. Organized feminism emerges as women's answer to this question. For instance, in seventeenth-century England suffrage and birth control had been at various times the object of organized feminist campaigns.

Some would argue that women in England, France, and the U.S. - given their level of political awareness - have also not been accorded respectable positions in politics. It must be remembered that suffrage was extended to women in the U.S. by the 19<sup>th</sup> Amendment to the constitution, which provides that the right of citizens of the U.S. to vote should not be denied or abridged on account of sex. There is a provision that congress shall have power to enforce that Amendment by appropriate legislation. It is instructive to note that the amendment was rejected by Mississippi (March 29, 1901) and Delaware (June 1901).

The euphoria that greeted the enfranchisement of women in the British Isles may well be appreciated when one reads Helen Blackburn's reactions:

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<sup>51</sup>Ibid., 4.

Parliament has changed the qualifications for electors; women have widened their public activities, the opposition has changed its standpoint.<sup>52</sup>

The author also had some emotional words about her race:

The Aryan race has worked out its faith along lines of Christian teaching that encouraged independence of thought and has worked out its political institutions on the lines of looking to the judgment of each to bear on the common concern of all. Such a race is carrying on its own highest traditions to a harmonious development by trusting both halves of the community to acquire the sign and symbol of citizenship.<sup>53</sup>

The suffragists Catt and Shuler went back into history and argued that neither the male nor the female movement had a stated beginning. They observed that, in the struggle upward toward political freedom, men were called upon to overthrow the universally accepted theory of the Divine Rights of Kings to rule over the masses of men, but the universally accepted theory of the Divine Right of men to rule over women was left unchallenged.<sup>54</sup> The authors argued that all opposition to the enfranchisement of women emanated from the theory. Therefore, the feminist movement was to fight that belief.

It is interesting to observe that white women protested against the 17<sup>th</sup> Amendment, which inserted the word “male” into the U.S. Constitution for the first time. Some suffragists thought it would be better to defeat the Amendment, while others approved the fact that Africans-Americans should win their political

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<sup>52</sup>Helen Blackburn, *Women's Suffrage* (London: Williams and Norgate, 1902), 227.

<sup>53</sup>Ibid.

<sup>54</sup>Carrie C. Catt and Nettie Rogers Shuler, *Women's Suffrage and Politics: The Inner Story of the Suffrage Movement* (New York: Charles Scribner, 1926), 4.

freedom. Hitherto, the African-Americans were recognized as “three-fifths of all other persons.”<sup>55</sup>

### *Summary*

The sensitive issue of the Sharia Court at the Federal level is now behind Nigerians. Reasons prevailed, and Sharia Courts of Appeal have been established in every State which has a Sharia Court.

Nigerians are still calling for the abolition of the Land Use Decree. The most innocuous provision of the Decree is that of investing in the governor of a State the power to revoke the right of occupancy, because it overrides “public interest.” The government, in deciding on and interpreting “public interest,” might use the clause for purpose of political vendetta. Political opponents may be the ones to be the major losers; such cases abound in the courts.<sup>56</sup> Brown was a lawyer of many years standing, well off, and could pay for the best legal minds in the country, which he did. He contested the revocation of his right of occupancy and won in the court. However, less affluent or experienced men often suffered in silence.

Revenue allocations and the creation of states are two topics that are very much in the minds of Nigerians. They want a greater share of Federal revenues to go to the States, and want more States, as evidenced in the responses to the questionnaires (see below). Perhaps what the people are demanding is a visionary

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<sup>55</sup>*Part 1, Section 1(3) of the U.S. Constitution.* The 14<sup>th</sup> Amendment was ratified on July 9, 1868.

<sup>56</sup>The celebrated case of Idamebi Brown vs. The Attorney General of Rivers States has the locus clasicus in such cases in Rivers State. Citizen Brown won over the government.

leader who will set out to address and solve Nigeria's pressing problems. They wonder how long the center could otherwise continue to exist.

Nigerian citizens must be taken seriously as they voice their opinions on political problems and issues. The question of language, although a lively issue, is rated very low in prioritizing their demands. Nigerians hope that true census figures will eventually be approved. The country has continued to use the 1963 census figures for planning. This again puts failure on the doorstep of the leadership.

## CHAPTER V

### OTHER SENSITIVE POLITICAL ISSUES

Flowing from Chapter Four, other national issues that have not been resolved by either the civilian regime, military regime, Constituent Assemblies or Constitutions since 1960 include:

Nationality – are you a Nigerian or an ethnic Nigerian e.g., Ibo Nigerian, Hausa Nigerian or Yoruba Nigerian. In these cases Nigeria has become an appendage. Ethnic origin comes before Nigerian nation. In a bid to solve this problem of ethnicity, the federal character element was introduced into Nigerian constitutions (see the 1979, 1989 and 1995 Constitutions).

Closely associated with the federal character principle was the notion of power sharing. Again, how successful was this provision in our constitutions (see 1979, 1989 and 1995 constitutions).

The issues above are probably the most sensitive aspects of the Nigerian political process. They impact on such matters as Nigerians' philosophy and forms of government, as well as on the democratic process. The introduction to this study attempted to explain regionalism, statism, ethnicity, and minority interests, as well as the federal character and the Nigerian question.

*Regionalism, Ethno- Nationalism and Statism in Nigeria*

Regionalism and statism in Nigeria have created a negative impact on its political evolution. From 1914, when the British colonizers amalgamated the northern and southern sectors that became Nigeria, regionalism was used as a weapon in the divide-and-rule policy.<sup>1</sup> Before the British left in 1960, they had perpetuated the great division between the North and the South. The British were more at home in northern Nigeria, where they controlled the civil and public services. Religion took its toll on the North-South dichotomy, and delighted the colonizers who fanned the embers of division. Nigerians became attached to the notion of northerner, easterner, and westerner, rather than embracing Nigerian citizenship and nationality. In the struggle for state creation from 1967 to the present, statism has captured the minds of Nigerians who exploit the concept of nation state for political advantages. Nigerians identify themselves by states first and Nigeria last.

The reward system in Nigeria has been based on ethnicity and statism, and is amply used by those in the corridors of power. Regionalism and statism promote group parochialism, paranoia, and alienation from the government and from the nation-state. They frustrate national identity. This is manifested in numerous ways. In certain states of the federation employment opportunities are denied to Nigerians on the basis of being non-indigenes. There are discriminatory charges of fees for educational and other social services based on statist or ethno-regional segregation, or on indigenous or non-indigenous persons of particular states, sections, or local governments. Political rights

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<sup>1</sup>James S. Coleman, *Nigeria: Background to Nationalism* (Oxford: Oxford University Press, 1971), 419-22.



are denied, such as the right to political representation to non-indigenous persons, some of whom may have lived in their adopted states or community all of their adult lives. There is also the refusal to vote at national elections for candidates from groups or part of the country for reasons of ethnic, state or even regional differences.

If reaction of voters to the presidential campaign is anything to go by, Ambassador Kingibe's chances of winning in tomorrow's convention of the Social Democratic Party (SDP) appears to be on balance ...it appears he was in the state (Rivers State) not only to canvass for votes but equally to remind the South that their bid for the Presidency was a mirage.<sup>2</sup>

As noted earlier, to eliminate the domination of the ethnically-based political parties, Babangida gave Nigeria two parties that cut across ethnic-religious lines. The politicization of the census exercise, which attempted to claim spurious yet advantageous population figures for ethnic, religious, and regional groups added to the problems. There was also undue ethnic and political patronage in relation to recruitment of personnel and allocation of public resources. The perpetuation of a gross imbalance in educational development among the ethnic groups and geographical areas of the country led to the adoption of the quota systems in recruitment, promotion, and admission to institutions of higher learning. However, there was preference for kith-and-kin in employment and access to opportunities for social and economic advancement.

Yusuf Bala Usman, former Secretary to the government of Kaduna State, held the view that the National Question went back to nineteenth-century Europe, as to major political and diplomatic problems, which involved the issues of the nation and position

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<sup>2</sup> "Lead Article," *Daily Sunray*, March 26, 1993, 8.

of nations and nationalities.<sup>3</sup> There was the German question, which concerned how the states and statelets, before unification, were to order their affairs, as well as internal and external relationships. The Polish question expressed concern about what to do about Poles, their territory and status. The Eastern question was involved with how the major European powers were to share in the dismemberment of the Ottoman Caliphate, and the Balkan question which was about the struggle over the post-Ottoman and post-Habsburg political order in the Balkans. The Balkan question came to prominence once again in the form of the crises and civil wars in Yugoslavia.

Usman argues that the National Question is the issue of the composition of the nation, meaning the issue of the nature of and relationship between the “nationalship” in a polity, with particular reference to the relationship at the level of language, culture, religion, territoriality, as well as communal, ethnic, and national identities and citizenship. These levels – low education, military organization, and administrations – cannot, according to Usman, meaningfully separate the issue of citizenship and of communal, ethnic, and national identities. This includes the issues of land ownership, employment, income distribution, the political and legal order, and the exercise of political power. In his opinion, the kingdoms, chiefdoms, city-states, and village confederations which the British conquered were not sovereign ethnic political blocs, “...which can be brought back into existence if Nigeria is dismembered; or which can provide the basis for entities out of which a confederation or commonwealth of independent states can be created.”<sup>4</sup> The reasons for this are clear. There were Hausa-

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<sup>3</sup>Yusuf B. Usman, “The National Question”, *Citizen*, December 4, 1992, 27.

<sup>4</sup>Ibid.

Fulani, Yoruba, Kataf, Tiv, Ijaw, or Urhubo polities that could be resurrected if

Nigeria were to split apart. Usman's argument continued:

For most of the 19<sup>th</sup> century, the Yorubas belonged to different sovereign polities which were hostile or openly at war with each other, in a complex pattern of alliances which involved diplomatic, economic, and military cooperation between some of these polities and neighboring polities like Bida, Benin, and Igala.<sup>5</sup>

In the case of the Sokoto Caliphate, Usman observed that, throughout its existence, its most serious and persistent enemies were polities made up largely of populations who were Hausa and Fulanis, like Kebbi, and Katsina.

Within the emirate of the Caliphate itself, devastating civil wars, for example in Bauchi in 1881, in Bida in 1881-82, in Kano in 1883 -95, and in Nuri throughout most of the 1890s, did not only pitch one ethnic group against the other, but represented political conflicts within the same ethnic group or groups.<sup>6</sup>

It must be pointed out here that civil wars such as those from 1881 to the 1890s could not possibly wipe out or occupy the defeated blocs, nor could they "colonize" them. In a roundabout way, Usman acknowledges the continued existence of the ethnic blocs when referring to the British colonialism:

The reality we have to face up to was that the British conquered and village confederations were weakening due primarily to internal factors limitations, slavery and the slave trade. Intensely particularistic communal and feudal autochtonies .....were some of the factors.<sup>7</sup>

Usman further remarked that, "In Nigeria, the struggle for independence was not conducted by Efiks, Nupes, Ibo, Yorubas or Ogonis etc, but Nigerians who were also

<sup>5</sup>Ibid.

<sup>6</sup>Ibid., 21.

<sup>7</sup>Ibid., 33.

Efiks, Nupes, Ibos, Yorubas, or Ogonis, etc.”<sup>8</sup> It should be noted here that these ethnic groupings banded together to face their common foe, the British. However, when independence was gained, those same ethnic groups throughout the nation saw themselves first as Efiks, etc., and then as Nigerians. It was this realization that brought about the Federal Character in the constitutional arrangements, as exemplified by Article 14(3) of 1979 Constitution and Article 15(3) of the 1989 Constitution. We believe that ethnicity and federal character are but the two sides of the same coin.

Some questions that are generally asked include whether the present structure of the country constitutes the National Question. The answer may be found in the political evolution of the country. The Nigerian federation evolved empirically, starting with the amalgamation of Nigeria in 1914. Except for one occasion (at Aburi, Ghana, in 1967), Nigerians have considered that confederation is unsuitable to their own situation, and this allowed the federal principle to survive somehow in Nigeria. So what, then, is the National Question? This leads to the problem of rulership. Who should rule? Rulership in Nigeria brings to the fore competing problems of domination, unequal opportunities, and unequal development. Differently put, the problem of ethnicity is central to the National Question in Nigeria. General Babangida sees it as rooted in the issue of equality of access to opportunities and resources, safeguards in the interest of all communal and social groups, and especially minority groups.<sup>9</sup>

Commenting on solutions to the National Question, Babangida pointed out that successive administrations have had to undertake structural and institutional reforms of

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<sup>8</sup>Ibid., 35-36.

<sup>9</sup>Ibid., 5-6.

the polity and economy in order to foster greater equality of access to opportunities for the citizenry. He commented on his administration's effort toward solving the

National Question:

This administration has progressively brought the essence and core value of federalism to all the communities or ethnic groups in this country through increased federalization of our political and economic processes by the creation of new states and local government units.<sup>10</sup>

Babangida's claim that his military regime is unitary must be examined. The empowerment of local government so as to relate directly to the central government is anything but a federalizing process. Local governments have access over the heads of state government in financial matters, such as the statutory allocations from the Federation Account. This study has considered this relationship under Revenue Allocation. The creation of new states and local government units led to the demand for more states and local government areas. Some states are so poor that they cannot carry out meaningful developmental projects without relying exclusively on the central government. Likewise, some local government areas have not fared better. Minority ethnic groups have been short-changed in the areas of access, and the ethnic minority mineral-producing areas have shared more doom than boom in Nigeria's oil wealth. The ecological damages suffered by these areas are yet to be fully addressed. The allocations from the Federation Account to solve ecological problems have remained mere budgetary statistics rather than realizable funds.

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<sup>10</sup>Ibid., 6.

It is not surprising, then, to read that Saro-Wiwa's answer to the National Question is Confederation.<sup>11</sup> He argues that, what has come to be known in Nigeria as the National Question, ".....is in reality the ethnic problem which is very important in a multi-ethnic country, be it Spain, Yugoslavia, Soviet Union, Great Britain, or the vast majority of African States."<sup>12</sup> He argues that, because ethnic groups are primordial, members of an ethnic group share common beliefs, values, or myths; this creates a solidarity which far surpasses loyalty to class, religion, or a newly-established nation state. His argument is that, because all ethnic groups are older than the new nation-states to which they form a party, ethnicity overrides national considerations.<sup>13</sup> However, in this present study the view is strongly held that ethnicity is the hub on which Nigeria's major social and political problems evolve.

A former military governor in Benue and Gongola States, Colonel Yohanna Madaki added his voice to the debate on the National Question: "Ethnic autonomy is the answer."<sup>14</sup> Madaki disagreed with those who called for the dismemberment of the Nigerian nation as a solution to the National Question. He looked beyond Nigeria to cite examples of minority ethnic groupings in other parts of the world.

This present study subscribes to the view that many countries present typologies of the National Question. In the U.S., there are, among many others, the Irish, Polish, German, Greeks, Jews, Italians, and Africans who also feel themselves Americans. However, the U.S. has absorbed these various nationalities through social and political

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<sup>11</sup>Ibid., 7.

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid., 14.

engineering. It may even be argued that the election in 1960 of John F. Kennedy as president lubricated the machinery of American national integration. Kennedy was Irish-American, as well as a Catholic. In Nigeria, the religious question ranks high as a destabilizing factor in its political evolution.

Bola Ige, the former executive governor of Oyo State, argued against Babangida's claim that his military administration "...has progressively brought the essence and core value of federalism to all the communities or ethnic groups in this country through increased federalization of our political and economic processes."<sup>15</sup> Ige argued that there was federalism during the civilian administration (1979 to 1983), but that there was only one command under the army.

We are running a military form of government with premises under military commanders. We are not running a federation. The governor of Yobe State ... cannot disagree with the president. In a civilian regime, the governor of Oyo State can say [that] he does not agree with the policies of the federal government, and he will still be there.... If God had made the Yorubas or the Ibos or Hausas to be large, there is nothing wrong about it. If the Tivs, or any other group are smaller, what will happen is that the Yorubas, Tiv, Edos, etc., will then sit down and decide how to live together. And so it does not mean the Yorubas will be broken up into states for the Edos to live together.... In U.S.A., don't you have New York, Texas and California which are large? Do they say they must be broken up because New Hampshire or Maine are smallest?<sup>16</sup>

Other schools of thought contend that the issue of the National Question has to do more with the distribution of the national wealth, the distribution of power, a spirit of give-and-take, the emergence of an acceptable leadership, and how to produce and

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<sup>15</sup>*Quality Magazine*, October 17, 1991, 8, 16.

<sup>16</sup>"The National Question", *Citizen*, 23.

change a national leadership. Madaki felt that to find a solution to the National Question, the afore-mentioned issues must be looked into.<sup>17</sup>

It should be recalled that the linkage between tribalism and ethnicity has been traced. The two fuse in Nigeria's political system. Events of the first coup d'état are mainly rooted in tribalism/ethnicity. January 15, 1966, marked the first coup d'état, and the Nigeria Question was at the center of events that led to the coup. An insider of the coup, Ben Gbulie, held the following opinion:

For far too long the country had been at the cross-roads, tottering dangerously on the brink of disaster. The political situation was gradually but surely getting out of hand. But by far the most dreadful of our country's insuperable monsters was tribalism ... it was in my opinion Nigeria's number one killer disease ... a fundamental factor of the problems of Nigeria unity. And right from the country's attainment of independence on October 1, 1960, many a tribalist parading as a politician had been busy fanning the ambers of tribalism into frenetic life.<sup>18</sup>

Gbulie was not alone in pointing at tribalism as the main root of the civil war. Colonel Madiebo claimed to be in the know about the January 1966 coup plans, and gave tribalism as one of the main reasons for its staging.

Thus, the political struggle and the consequent drifting apart of the various people of Nigeria went on over the years unchecked to an extent that the Federal Parliament was reduced to an inter-tribal battlefield. Sporadic physical violence erupted from time to time between the various people of Nigeria to mark the end of each phase of the rapid drift toward total disintegration of the country.<sup>19</sup>

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<sup>17</sup>Ibid., 21.

<sup>18</sup> A. M. Manisara, *The Five Majors: Why They Struck* (Zaria: Hudahuda Publishing Co., 1982), 7-8.

<sup>19</sup> Ibid., 9, quoting Madiebo on the Biafran War.



He also blamed the northern part of the country for usurping the political and military power.

At independence, Nigeria became a federation and thus remained one country. Soon afterward, the battle to consolidate this legacy of political and military dominance of a section of Nigeria over the rest of the federation began with increased intensity. It is this struggle that eventually degenerated into coups d'état and a bloody civil war. In Nigeria, like in most parts of Africa, where the policy is once in power always in power, only force could remove a government. It was not enough for the North to gain full control of the army with abandon for the benefit of the Region exclusively.<sup>20</sup>

On the influence exerted by northern politicians over the army, Gbulie observed:

It was indeed evident that, in an attempt to catch up militarily with the South, the Northern politicians had thrown out all discretion. They had lowered standards of admission drastically in settling for the minimum. For, as I recalled, all the Northerners in any intake had been trained at the Mons officer cadet school in Aldershot [England]. And they had become officers within barely six months of military training; whereas those of us who had been sent to Sandhurst [England] had had to do two long years to earn the Queen's Commission. Standards of officer prerequisites had therefore dropped drastically. So had those of discipline. But tribalism had risen like a phoenix in the Nigerian Army. Promotions, too, were being conducted with a bias towards tribal affiliations... The Northern politicians ... had contrived to give their own man, Major Shitmu Aloa, a huge boost. Without paying any regard to seniority, they had him set up as commander of the newly-formed Nigerian Air Force over and above his superiors and better ... A coup d'état, then, I was fully convinced, would go a long way to remedy the whole situation. There was, indeed, much to set things right.

It took long years to earn the Queen's Commission. The implications were quite clear and most disturbing. Not only had these Northerners become Commissioned Officers before we were halfway through out the first year at Sandhurst, they had all risen to the enviable rank of Captain before we could even appear at the Sovereign's parade, which served essentially as a prerequisite for our passing out as second Lieutenants.<sup>21</sup>

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<sup>20</sup>Ibid., 10.

<sup>21</sup>Ibid., 37-38.

Gbulie did not stop there. He also attacked the academic standing of the northern military officers:

By 1964, a group of young Nigerian officer-cadets, mostly Northerners, had been declared academically unfit and hence repatriated by the Canadian military authorities. These same cadets were, however, pronounced commissioned by the Nigerian Federal Government no sooner than they had arrived at the Ikeja Airport. Consequently, they had to be absorbed.<sup>22</sup>

Some of the above assertions were vigorously denied by no less a person than Alhaji Liman Ciroma, former Secretary to the Federal Military Government. In his 1982 Ali Akilu Memorial Lecture, he stated the following:

The first attempt with democracy in government ended with the 1966 coup. Our experience in shaping a new system as the foundation for future development was abruptly and violently brought to an end by what, to those close to the center of activities, then appeared as a deliberate and coordinated plan by a few soldiers aided by many civilians, in government, the universities, and elsewhere to put an end to effective Northern Participation in government and positions in the army. These were the only two sectors in public life with major Northern involvement. Not the civil service, home or foreign banks, commerce, industry, or the professions.<sup>23</sup>

Manisara challenged the assertion that certain ethnic groups in the country, notably the northerners – the Hausa-Fulani in particular – had been ruling the country since its independence in 1960, and they wished to continue to dominate to the exclusion of all others.<sup>24</sup> He drew attention to statistics reflecting the spread of some political officers among Nigerian ethnic groups from October 1960 to April 1982 (Table 2). Political power-sharing as at 1982 is illustrated in Table 3. The minorities of Nigeria

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<sup>22</sup>Ibid., 37.

<sup>23</sup>Ibid., 51-52.

<sup>24</sup>Ibid., 55-56.

could easily constitute the political majority if they embraced the Rainbow Coalition of Jesse Jackson in the U.S. However, it is not certain that they have the political will.

Ethnicity in the Nigerian political evolution is older than the National Question and Federal Character. A view has developed that ethnicity is an inherent aspect of social change in all culturally heterogeneous societies. This view asserts that neither the disappearance nor a significant amelioration of ethnic conflict is possible. It laments the failure of national institutions of explicitly recognizing and accommodating existing ethnic divisions and interests. This view further recommends political arrangements which give to all communal groups a meaningful role in national life which can keep communal conflicts within manageable bounds.

Nigeria has made feeble attempts at political arrangements aimed at solving the ethnic problems.<sup>25</sup> We identify the role of the two Constituent Assemblies as aiming at the solution of the ethnicity problem. But how did ethnicity grow to such a political monster? The genesis of its development is the colonial urban setting, which has been described as the cradle of ethnicity.<sup>26</sup> In Nigeria, this position was strengthened by the thrust of colonialism to Africa.<sup>27</sup> The term Yorubalism began to be used to refer to the domains of all rulers who claimed their descent from the mythical Oduduwa instead of

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<sup>25</sup> Nnoli, *Ethnic Politics in Nigeria*, 16-17, expressing the viewpoints of Robert Nelson and Howard Wolpe, "Modernization and the Politics of Communalism: A Theoretical Perspective," *American Political Science Review*, vol. lxiv (December 1970), 1112-30.

<sup>26</sup> "The National Question", *Citizen*, 35.

<sup>27</sup> *Ibid.*

the Kingdom of Oyo to which it was previously associated.<sup>28</sup> In Iboland, there was apparently no history of common pre-colonial consciousness and identity.

In Nigeria, the competition for limited environmental resources sharpened the ethnic consciousness, as politicians played on such sentiments to secure firm political footholds. The British colonial policy of divide and rule, or indirect rule, widened the social distance among the communal groups. The approach reinforced the ethnocentric factor in the emergence of ethnicity.

The politicization of ethnicity and regionalization of politics was vigorously pursued by the British colonialists, for which the Richards Constitution of 1946 laid the foundations. It established three legislatures, one for each region of North, East, and West. Three political giants emerged from these regions. Ahmadu Bello to the North, Nnamdi Azikiwe to the East, Obafemi Awolowo to the West.

It is common knowledge that the Action Group sprang up in 1951 to take advantage of the Richards Constitution. Awolowo thus reached his dream of ethnic constitutional regions which he advocated by 1947. The cherished objective of the group was to displace Azikiwe from political power in the western region. He appealed to base ethnic sentiments to reach his goal. Regrettably, the group became the first part of "...the Nigerian petty bourgeoisie and comprador bourgeoisie to be inspired by, founded on, and nourished by ethnic chauvinism and regional parochialism."<sup>29</sup> The NCNC was also forced to assume an ethnic regional character. The NPC, led by

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<sup>28</sup>P. C. Lloyd, *Africa in Social Change* (Hammondsworth, England: Penguin, 1967), 288-303.

<sup>29</sup>Nnoli, *Ethnic Politics in Nigeria*, 155.

Ahmadu Bello, was not left out. It soon became a party of the northern people. Only an ad hoc coalition programs brought the NCNC and the NPC together.

Ethnic group associations were formed, such as the Igbo Union, to perform the function of widening opportunities for employment, education, and other forms of social security. An Igbo applicant for a job soon abandoned English for the Igbo language if the manager was an Igbo. The same scenario was replicated by a Yoruba or a Hausa\Fulani applicant. Ethnic or tribal unions flourished significantly outside their native areas, and particularly at the central government level, to obtain a share in the national cake.

Looking across Nigeria towards the U.S., the Federal Character requirement would render unconstitutional a situation where the U.S. President and Vice-President were from southern states, such as President Clinton and his Vice-President, Al Gore.

The economic dimension of the ethnic question, which is the centerpiece of the National Question, will now be addressed. The socioeconomic basis of the emergence of ethnicity has been discussed. The rivalry for scarce resources sharpened the ethnic question. There could hardly be a meaningful discourse about the economic angle without reference to the Structural Adjustment Program (SAP),<sup>30</sup> which was introduced in the mid 1980s to achieve sustained growth with minimal inflation within the medium term. The decision to implement it was debated throughout the nation. Nigerians rejected rushing headlong to the International Monetary Fund (IMF) for a loan and its conditionalities. In apparent acceptance of the people's verdict, the government designed what it termed a home-grown Structural Adjustment Program, which was in

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<sup>30</sup>“Money Watch for the Third Republic: A Question of Economic Viability,” *Guardian*, June 9, 1993, 15-25.

substance typical of the IMF/World Bank supported adjustment program. It was more in the interest of the economic ruling class to implement the program. The ruling class had hoped that if SAP was faithfully implemented, the economic reform would improve the living standards of the people, and that, if the material conditions of the people improved, then tension and antagonism would be reduced.<sup>31</sup> However, as it turned out, the advantages of SAP accrued to capital rather than labor.

The ruling class (or propertied class) did not anticipate that the effects of these economic reforms would invoke the National Question. The call to resolve it intensified. During the period 1980-92, Nigeria moved from a middle-income country, with per capita GNP at US \$1,500, to a low-income country. By 1987, GNP per capita stood at US\$270 per year. In real terms, in 1975 GNP per capita for Nigeria grew by 5.3 percent. For the period 1980-83 it dwindled by 4.8 percent.<sup>32</sup>

In light of the above fall in the economic growth and the deteriorating social services (such as education, health and public utilities), a steady decline in productivity, galloping inflation, a high rate of unemployment, and abject poverty, have become the badges of Nigeria. Ethnicity thrived better during the woes of economic depression, especially during the period 1986-93. There seems to be no end to Nigeria's disarticulated economy. The instability in the exchange rate of the Naira (N) depreciated from N7.00 for \$1.00 in 1989 to N22.00 for \$1.00 in 1993. The figures represent the first tier official rate, which is not within the reach of the masses. The

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<sup>31</sup>Ibid., 15.

<sup>32</sup> World Bank Statistics of 1980, as quoted in *ibid.*, 23.

black market rates were N42.00 for \$1.00 in 1993. By 1995 the exchange rate dwindled to N85.00 for \$1.00.

Revenue allocation did not escape the evil of ethnic considerations. It is politically uncanny that the minority states produce over 80 percent of Nigeria's oil. To reduce the revenue accruable to these states, the powerful majority tribes did not frown at an arrangement by which the on-shore and off-shore dichotomy was introduced as a factor in revenue allocation. In an objective recommendation on revenue allocation, the Political Bureau stated, "The dichotomy between on-shore and off-shore in the allocation of revenue due to the oil-producing states should be abolished, as it is oblivious of the tremendous hazards faced by the inhabitants of the areas where oil is produced off-shore."<sup>33</sup>

#### *Nationalism and Regionalism in the Constitutional Deliberations*

The Constitution Drafting Committee of 1976 sought to solve the ethnic problem by adopting the concept of Federal character for the country. The underlying belief in this approach is the assumption that the various linguistic groups in the country are essentially significant in their differences rather than in their similarities. The CDC ignored such characteristics as values, norms, customs, common history, and experiences shared with the various linguistic groups. Therefore, it concluded that the country had a Federal Character:

...the distinctive desire of the people of Nigeria to promote national unity, foster national unity, and give every citizen of Nigeria a sense of belonging to the nation notwithstanding the diversity of ethnic origin, culture, language, or religion which may exist and which it is their

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<sup>33</sup> *Report of the Political Bureau*, 172.

desire to nourish and harness to the enrichment of the Federal Republic of Nigeria.<sup>34</sup>

The CDC specifically made provisions for bridging these differences:

The composition of the Federal Government or any of its agencies and the conduct of their affairs shall be carried out in such a manner as to recognize the federal character of Nigeria and the need to promote national unity and to command national loyalty. Accordingly, the predominance in that government or its agencies of persons from a few states, or from a few ethnic or other sectional groups, shall be avoided. The composition of a government other than the federal government or any of their affairs shall be carried out in such manner as to recognize the diversity of the peoples within their area of authority and the need to promote sense of belonging and loyalty among all the peoples of Nigeria.<sup>35</sup>

In an attempt to strengthen the effectiveness of this provision, the Draft Constitution of 1976 further provided in Article 123 that at least one minister of government of the federation be appointed from among Nigerians citizens who belonged to each of the states comprising the federation.<sup>36</sup>

Further:

Article 173(26) – The members of the executive committee or other governing body of a political party shall be deemed to reflect the federal character of Nigeria only if the members belong to different states, not being less in number than two-thirds of all the states comprising the federation.<sup>37</sup>

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<sup>34</sup> *Report of the Constitution Drafting Committee* (1976), vol. 1, x. The above is also contained in Article 8 of the Draft Constitution.

<sup>35</sup> *Ibid.*, 11, and Article 8(2) and (3).

<sup>36</sup> *Ibid.*, 49, and Article 123(2).

<sup>37</sup> *Ibid.*, 71.



These well-planned provisions posed problems of implementation. Usman aptly observed that the crucial words “belong to a state” were quite problematic.<sup>38</sup>

Article 210 – “Belonging to” when used with reference to a state refers to a person either of whose parents was a member of a community indigenous to a state.

Usman points out the difficulty in deciding what constitutes “a community indigenous to a state.”<sup>39</sup> How long would generations of a family have to reside in a state before its members became indigenous?

Every time a political party publishes the names of the members of its executive council, they would have to attach their genealogies and probably court action would follow, not only on the origin of the individuals and their parents and grandparents, but on the indigeneity or not of particular communities they claim to belong to. There shall be a very lucrative business for us in history, fabricating and exposing genealogies.<sup>40</sup>

Usman felt strongly that such an exercise would make indigeneity a permanent political issue. It would also conflict with provisions of the constitution with regard to residence rights, and undermining the development of national citizenry – a basic requirement for national cohesion.<sup>41</sup>

Some argue that, rather than contribute to national cohesion, these provisions would more likely lead the country farther away from that goal. Indeed, the provisions were merely part of a number of devices deployed in the intractable struggles of the

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<sup>38</sup> Yusuf Bala Usman, “Democracy and National Cohensive: The Bankruptcy of the CDC Majority Draft,” public lecture for the National Union of Gongola Students at the Murtala Muhammed College, Yola January 1, 1977, 8.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid., 8-9.

<sup>41</sup> Ibid., 9, and Article 9(3).

various regional factions of the privileged classes. Their only relationship to unity was their pretensions to establish some order in the struggle of these factions for the division of the national cake.

The CDC Draft Constitution issued the following recommendations:

... encourage intermarriage among persons from different places of origin, or of different religions, ethnic or linguistic associations or ties, and to promote or encourage the formation of associations that cut across ethnic, linguistic, religious, or other sectional barriers, and foster a feeling of belongingness and of involvement among the various peoples of this country, to the end that loyalty to the nation shall override sectional loyalties.<sup>42</sup>

These sanctimonious provisions fell short of practical implementation, thereby confining them to the level of mere rhetoric.

Usman's critique covered the CDC Draft Constitution's provisions for the election of the executive president. These provisions touched and concerned the ethnic question.

The President is deemed elected if:

- i. (a) he has the highest number of votes cast at the election; and
  - (b) where there are only two candidates for the election of the candidate who wins a majority of votes in more than half of the states within the Federation; or
- ii. Where there are only two candidates for the election of the candidate who wins a majority of votes in more than half of the states within the Federation; or
- iii. In default a candidate who is duly elected in accordance with paragraph (i) of subsection (4) of this section, there shall be a second election at which the only

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<sup>42</sup>Ibid., 9, and Article 9(3).

candidate shall be the candidate who secured the highest votes at the first election and that one among the remaining candidates who has a majority of votes in the largest number of states.<sup>43</sup>

Okwudiba Nnoli gave an excellent rating to Usman's critique of the CDC views on the ethnic question. We believe that Nnoli and Usman could have done better had they spared some thought to the aims of the Fundamental Objectives and Directive Principles of State Policy, of which the Federal Character is a part:

By Fundamental Objectives we refer to the identification of the ultimate objectives of the Nation, whilst Directive Principles of State Policy indicates the paths, which lead to those objectives. Fundamental objectives are ideals towards which the nation is expected to strive, whilst Directive Principles lay down the policies, which are expected to be pursued in the efforts of the Nation to realize the national goals.<sup>44</sup>

In an attempt to rationalize the import of Fundamental Objectives and Direct Principles into the Constitution, the Committee argued that governments in developing countries have tended to be preoccupied with power or its material prerequisites. Given the conditions of "underdevelopment" power offered the opportunity of a lifetime to rise above the general poverty and squalor that pervaded the society. It provided a rare opportunity to acquire wealth and prestige, to be able to distribute benefits in the form of jobs, contracts, scholarships, and gifts of money to one's relatives and political allies. Such is the preoccupation with power and its material benefits that political ideals as to

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<sup>43</sup>*Report of the Constitution Drafting Committee* (1976), vol. 1, v.

<sup>44</sup>*Ibid.*

how society can be organized to the best advantage of all hardly enter into the calculation.<sup>45</sup>

The CDC felt that the Constitution in Nigeria's past experience assumed that those who wielded the power of the state would be conscious of and responsive to its obligations and responsibilities. It was, therefore, silent on the corresponding duties of the government towards its subjects. In the opinion of the CDC, a constitution had to do more by proclaiming the principle on which the state was organized, and spell out the ideals and objectives of the social order. The need to include the objectives in the constitution was the greater because of the heterogeneity of the society, the increasing gap between rich and poor, and the growing cleavage between the social groupings, all of which combined to confuse the nation and bedevil the concerted march toward orderly progress.

The subcommittee on Fundamental Objectives and Directive Principles recommended that they should be justiciable to a "limited extent." They argued that it should be possible to obtain a declaration from the courts as to whether or not some action or omission of the government was or was not a contradiction of the Fundamental Objectives or Directive Principles. If such a declaration were obtained, it might be a ground for further action such as impeachment of the offending functionaries, but, "It should not be a ground for invalidating the particular action, be it legislative, executive, or otherwise."<sup>46</sup>

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<sup>45</sup>Ibid., v-vi.

<sup>46</sup>Ibid., vii.

The majority of the members of the CDC at last felt convinced that making the provision under the Fundamental Objectives and Directive Principles justiciable would lead to "...constant confrontation between the Executive and/or the Legislature on the one hand, and the Judiciary on the other."<sup>47</sup>

Contrary to the stand taken by Usman and supported by Nnoli, the CDC addressed the implications of the inclusion of Fundamental Objectives and Directive Principles in the Draft presented to the 1978 Constituent Assembly. Based on the foregoing, the CDC cannot be said to have strived to provide the ultimate solution to the ethnic problem. The problems of the National Question and Federal Character are still ongoing in the Nigerian political situation. It would be pretentious to state otherwise. The CDC took only the first steps towards solving these intractable problems in Nigeria's political evolution

*Federalism and Citizenship in the Constitutional Deliberations*

What, then, was the input of the 1978 Constituent Assembly in the face of the CDC recommendations on the Fundamental Objectives and Directive Principles of State policy? Article 14(3) summed up the stand of the Constituent Assembly on Federal Character:

Article 14(3) – The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or in any of its agencies.<sup>48</sup>

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<sup>47</sup>Ibid.

<sup>48</sup>Article 14 (3) of the 1979 Constitution

As directed by the CDC, the 1978 Constituent Assembly accepted the nonjusticiability of the provisions under the Fundamental Objectives and Directive

Principles of state policy:

Article 13 – It shall be the duty and responsibility of all organs of government, and of all authorities and persons exercising legislative, executive, and judicial powers, to conform to, observe and apply the provisions of this chapter (i.e., Chapter Two of this Constitution).<sup>49</sup>

As before, the 1978 Constituent Assembly again rubber-stamped the work of the CDC in the afore-mentioned chapter.

Did the 1988 Constituent Assembly make any new contributions to the work of its predecessor on the Fundamental Objectives and Directive Principles? The CRC set up by Babangida conceded that it made no major changes in the work of the CDC. The CRC stated that, “The Committee substantially agrees with the reasons advanced by the chapters of the 1979 Constitution on this issue, as contained in .... the Constitution Drafting Committee Report.”<sup>50</sup>

However, Subcommittee II was concerned by the fact that Chapter II of the 1979 Constitution dealt mainly with what the state should do for the citizen, and not with what the citizen should do for the state. The Subcommittee’s view was that the past constitutions, including that of 1979, spoke only in terms of duties of the state to its citizens, and of the rights of citizens – but never of the duties of the citizens. The Committee believed that, in order to help revive and sustain the spirit of patriotism, citizens must begin to consciously appreciate that these rights could not be fully

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<sup>49</sup>Article 13 of the 1979 Constitution

<sup>50</sup> *Report of the Constitution Review Committee* (Lagos: Federal Government Printers, 1988), vol. 1, vii. This document contains the Revised 1979 Constitution.

enjoyed unless they themselves made some effort to contribute to the maintenance of the country.<sup>51</sup>

The 1988 Constituent Assembly endorsed the entrenchment of Chapter Two of the 1979 Constitution (Article 14 through 24) in the 1989 Constitution. The inclusion of the duties of the citizens in the 1989 Constitution was an innovation. It included the following:

- a. To abide by this Constitution, respect its ideals and its institutions, the National Pledge, and legitimate and properly constituted authority;
- b. To respect the dignity and religion of other citizens, and the rights and legitimate interests of others, and to live in harmony and in the spirit of common brotherhood;
- c. To participate in and defend all democratic processes and practices.<sup>52</sup>

One example of the above declarations touches on religion. There is no evidence that religious tolerance is indifferent to the duty imposed by the Directive Principles of state policy. A case in point is the Zong-Kataf riot, dealt with elsewhere in this work. The 1988 Constituent Assembly endorsed the CRC Report, including the section on the duties of the citizens, under Article 24 of the 1989 Constitution. However, national unity is yet to transcend ethnicity or tribalism in Nigeria. The solution to the problem of ethnicity cannot, therefore, lie in nonjusticiable articles of the Constitution, as evidenced by the argument of Chazan:

Ethnicity as a subjective basis for collective consciousness gains relevance to the political process when it spurs group formation and

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<sup>51</sup>Ibid., vol. 2, vii.

<sup>52</sup>Chapter II, 1979 Constitution

underpins political organization. Therefore, in its capacity to stimulate awareness and a sense of belonging among the potential membership of a group, the psychological dimension of ethnicity complements and buttresses the political dimension of interest-oriented social action. Thus, [while] a sense of peoplehood participation in the political process [exists], nevertheless, initiative on the part of an elite group remains indispensable to the promotion and defense of group interests.<sup>53</sup>

TABLE 2. NIGERIAN HEADS OF STATE AND GOVERNMENT FROM THE DATE OF INDEPENDENCE, OCTOBER 1, 1960, TO APRIL 1982

NAME	APPOINTMENT	ETHNIC GROUP	DURATION
Dr. Nnamdi Azikiwe	Head of State	Igbo	1960-66 (6 yrs)
Tafawa Balewa	Head of Government	Hausa/ Fulani	1960-66 (6 yrs)
Aguiyi Ironsi	Head of State/Government	Igbo	Jan. – Jul. 1966 (7 months)
Yakubu Gowon	Head of State/Government	Angsar (minority)	1966 – 1975 (9 years)
Murtala Mohammed	Head of State/Government	Hausa/ Fulani	Jul. 1975 – Feb. 1976 (7 months)
Olusegun Obasanjo	Head of State/Government	Yoruba	Feb. 1975 – Oct. 1979 (4 ½ yrs)
Alh. Shehu Shagari	Head of State/Government	Hausa/ Fulani	Oct. 1979 – Dec. 31, 1983 (4 ¼ yrs)
Muhammadu Buhari	Head of State/Government	Hausa/ Fulani	Dec. 31, 1983 – Aug. 27, 1985 (1 <sup>2</sup> / <sub>3</sub> yrs)
Ibrahim Babangida	Head of State/Government	Kanuri?	Aug. 27, 1985 – Aug. 27, 1993 (8 yrs)

Source: Statistics from Manisara, *The Five Majors*, 51.

<sup>53</sup>N. Chazan, R. Mortimer, J. Ravenhill, and D. Rothchild, *Politics and Society in Contemporary Africa* (Boulder, Co: Lynne Reiner 1988), 102.



TABLE 3. POLITICAL POWER SHARING (AS OF 1982)

Federal:		
President of the Republic	Hausa/Falani	Majority Tribe
Vice President	Igbo	Majority Tribe
President of the Senate	Ogoja	Minority Tribe
Speaker, House of Representative	Igbo	Majority Tribe
Chief Justice of the Federation	Yoruba	Majority Tribe
State:		
4 State Governors: Lagos, Ogun, Ondo, Oyo		Yoruba
5 State Governors: Sokoto, Kaduna, Kano, Bauchi, Niger		Hausa/Fulani
2 State Governors: Anambra, Imo		Igbo
8 State Governors: Bendel, Kwara, Plateau, Benue, Borno, Gongolo, Rivers, Cross River		Minorities

Source: Manisara, *The Five Majors*, 55 - 56.

### *Summary*

A Nigerian has two answers to the question “where do you come from,” in others words, what is your nationality? The answer depends on the place where the question was posed. If in Nigeria the answer will be by ethnic root, e.g. Rivers, Lagos, Kano, etc. This means Nigeria is subsumed in the ethnic/state grouping. The national question follows in like manner. In appointments the goal is to have every State represented in the federal cabinet, companies and parastatals. Even at this, the key positions at the federal level go to the majority tribes e.g. Hausa, Ibo and Yoruba (see

Tables 1, 2, and 3.)<sup>54</sup> The conduct of constitution makers over selected National Issues points to the conclusion that members were at the conference principally for what they can clinch for their ethnic grouping. The next Chapter focuses on the Transition from Military to Civilian Rule.

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<sup>54</sup>*Where We Stand*, 42 – 43. This document is the text of a World Press Conference organized by Delegates from the South-South Geo-Political Zone.

## CHAPTER VI

### TRANSITION FROM MILITARY TO CIVILIAN RULE

Every military administration that ruled Nigeria had in its agenda a Transition Program. However the transition programs of General Babangida and Abacha stand out as stratagem of deceit meant to prolong their tenure in office. It must be stated here that the transition programs of General Murtala Mohammed from July 29, 1975 to February 13, 1976 and General Olusegun Obasanjo from 1976 – 1979 were genuine and well received by Nigerians.

The Political Bureau of General Babangida was a ploy to stay longer in power. When he was overthrown by the Abacha coup, he adopted the slogan – “stepping aside.”

Babangida introduced his two party systems in Nigeria. Rather than allow the principle of two parties to evolve he forced them on Nigeria – the NRC (National Republican Convention) and the SDP (Social Democratic Party).

We shall consider the place of the National Assembly and Transition Program. The military factors will also be considered

The highlights of this Chapter will include:

- i. The governmental response to the Report of the Political Bureau
- ii. Establishment of Constitutional Institutions
- iii. Ratification of the constitution
- iv. The military in the Report of the Political Bureau.

*The Transitional Program and Constitutional Deliberations*

The importance of the Transition Program in Nigeria constitution making and its promulgation cannot be over emphasized. The military in Nigeria present themselves as “Corrective Regimes” whenever they seize power. This claim portrays them as umpires for the political class who impatiently wait to assume power from the military.

Without promulgation by the military, the constitutions of 1979, 1989 and 1995 would remain mere drafts. However, the legitimization of our Constitution by the military is a negation of the spirit of democratization that is sweeping through the civilized world. The 1979 Constitution was promulgated by Decree No. 104 of 1979 and that of 1989 by Decree No. 12 of 1989. The 1989 constitution did not become operational before the June 12, 1993 annulment of the Presidential Election in Nigeria. The 1995 Constitution was operational during the Obasanjo administration. (Since then, the 1999 Constitution has superseded that of 1995).

It is with this backdrop that we examine the Transition Program during the Babangida administration. We ask, was the Transition Program a means of perpetuating military rule in Nigeria? The answer will be evident in the pages that follow.

*The Politics of the Transition Program: Political Bureau*

The Transition Program, first mooted by General Ibrahim Babangida during his budget speech in 1986 and his inaugural address to the Political Bureau, was to terminate on October 1, 1990. Therefore, he called on Nigerians to debate on an appropriate transition program, which would provide the framework for withdrawal of the military and evolution of a democratic polity. Babangida said that he expected the debate to concentrate on devising a smooth transition or disengagement process from

the military to a participatory political system. During a speech Babangida gave at the inauguration of the Political Bureau at Abuja in 1986, he commended that the Bureau's assignment "...must, therefore, provide time sequences for the transition to be achieved by October 1, 1990."<sup>1</sup> He tried hard to justify the intrusion of the military into governance, and sought legitimation for his administration. He declared;

We are familiar with the political conditions, which brought about the military. Invariably, military administrations have come about as a result of bad government; indeed, our present economic predicament can be attributed to the nature and practice of partisan politics. It has contributed, in part, to the increasing cynicism and apathy of individuals, economic mismanagement as well as the apparent social chaos and disorder in our society. It has also adversely affected our capacity, as a nation, to realize our vast economic potential.... We are committed to popular participation in the process of evolving a viable political order.<sup>2</sup>

Babangida then went on to proclaim the mission of his administration:

Apart from the immediate and more visible problem of salvaging our battered economy, our other task is to bring about a new political culture ... that would bring forth a stable, strong and dynamic economy... These ideals and values have already been clearly articulated in the fundamental principles of state policy as enshrined in the 1979 constitution. This administration is firmly committed to the realization of these objectives.<sup>3</sup>

With the backdrop of the foregoing, it can be deduced that President Babangida was committed to successfully solving the problem of Nigeria's "battered economy" and in its place set up the framework for a dynamic one, as well as establishing a new

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<sup>1</sup> *Report of the Political Bureau*, 6, quoting excerpt from the speech entitled, "The Search for a New Political Order," by Babangida at the inauguration of the Political Bureau at Abuja, January, 1986.

<sup>2</sup>Ibid., 4.

<sup>3</sup>Ibid., 229.

and veritable political culture. The transition program was to be tied to the achievement of these noble goals, but the promises did not end there:

As an Administration, we have stated our commitment to a decision-making process that will always be guided by the principle of discussion and consultation. We are committed to these basic tenets of democratic government, and we will adhere to it in order to remove the myth attached to the leadership of our people. We equally accept that the challenge of leadership dictates that government must remain responsive to popular wishes in order to foster a sense of greater belonging.<sup>4</sup>

Armed with these promises, Nigeria set out on what turned out to be a tortuous march to civilian rule by October 1, 1990, a date given by Babangida himself. He promised that his administration would not stay a day longer than absolutely necessary, and urged the Bureau to provide a time sequence for the transition to be achieved by that date.

Many Nigerians viewed the 1979 handover by Obasanjo to Shagari on October 1, 1979, as abrupt and that it left civilians poorly prepared for the task of governance. This school of thought insisted that military withdrawal should be phased out, starting with a supervised, democratically elected governance at grass-root level. In the words of the Bureau:

What we need is not a handover program of the 1979 experience, but a broadly spaced transition in learning, institutional adjustment and a reorientation of our political culture, at sequential levels, beginning with local government and ending at the federal level.<sup>5</sup>

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<sup>4</sup>Ibid.

<sup>5</sup>Ibid.

*The Report of the Political Bureau*

The Bureau felt that the transition process was justifiable, even for the fact that it constituted a period of learning about the evolution of the democratic process. It recommended that the process should go beyond the transition period, and that it should start in 1987 and encompasses a number of activities and should end by 1990:

1987:

- i. Establish a Directorate of Social Mobilization and Political Education;
- ii. Set up the following national commissions:
  - a. National Commission on Political Parties and Elections
  - b. National Population Commission
  - c. Code of Conduct Bureau and Code of Conduct Tribunal;
- iii. Set up a small constitutional review panel to produce the draft of the amended version of the presidential system of government in consonance with the new philosophy of government;
- iv. Create new states, if approved;
- v. Conduct elections into local government councils on a non-party basis.

1988:

- i. Lift the ban on political activities;
- ii. Register two political parties;
- iii. Base elections to local government councils on the two-party system.

1990:

- i. Hold elections at the state level for governors and legislatures (not later than March 1990);

- ii. Hold general elections to the National Assembly;
- iii. Hold Presidential Elections.

Thirteen of the 17 members of the Political Bureau endorsed the above program.

However, in a dissenting opinion, a minority of members made the following recommendations:

While the present administration's interest in time-sequences for the transition to be achieved by October 1, 1991, is generally appreciated, the members feel strongly.... that the entire transition program requires proper grounding in the interest of the evolution of a state polity.<sup>6</sup>

The minority report, therefore, proposed that military rule at the level of the AFRC/Presidency should phase out in October 1, 1992. The details and dates are as follows:

1987:

- i. Proclaim the new philosophy of government based on socialism (this recommendation was rejected outright by the military administration);
- ii. Establish the Directorate of Social Mobilization and Political Education;
- iii. Set up the National Commission on Political Parties and Elections;
- iv. Create new states, if approved;
- v. Conduct elections to all local government councils by October 1987.

1988:

- i. Set up a small constitutional review panel to produce the draft of the amended version for the presidential system of government, in consonance with the new philosophy of government, in January 1988;

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<sup>6</sup>Ibid., 227.



- ii. Organize a referendum on the draft constitution, and enactment of the constitution to be fully effective from October 1992;
- iii. Set up the National Population Commission to begin preparation for a national population census;
- iv. Establish national bodies or commissions, such as the Code of Conduct Bureau, the Code of Conduct Tribunal, and the National Revenue Fiscal Commission.

1989:

- i. Conduct a population census;
- ii. Lift the ban on political activities and create a ban on participating in politics for those so recommended;
- iii. Form, recognize, and register the two political parties;
- iv. Hold repeat elections to local government councils (in October)

1990:

- i. Delimit electoral constituencies;
- ii. Change a government at the state level to replace the military rule, and hold elections based on the two-party system with a 5-year lifespan;
- iii. Create a new revenue allocation formula based on the ratification of the new constitution (constitutional responsibilities for the three tiers of government).

1991:

- i. Repeat the local government elections based on party competition;

- ii. Replace all military officers in political and nonmilitary assignments with civilians or professionals as otherwise provided in the new constitution;
- iii. Hold general elections to the National Assembly;
- iv. Replace the AFRC with a National Advisory Council, but also composed of military officers acting as an advisory unit under the Chairmanship of the President.

1992:

- i. In August/September, hold a presidential election;
- ii. Completely withdraw the Armed Forces from government.

*Government Responses to the Report of the Political Bureau*

In an address to the nation on the country's political transition program,

Babangida expressed some interesting views:

Given the major issues, which must be tackled before military disengagement, the Armed Forces Ruling Council has decided to accept the view of the Cookey Report that 1992 will be the final year of disengagement, all things being equal. However, the political transition program takes immediate effect. The program which shall begin at the local government level this year, will run through the state government level, and mature at the federal government level. For the avoidance of doubt, all these processes shall, at every stage, be properly supervised by the military administration.<sup>7</sup>

However, the AFRC came up with a mixture of the majority and minority reports on other issues, and adopted the following timetable for the political program:

3rd Quarter 1987:

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<sup>7</sup>Babangida's speech to the nation on the country's political program, *Transition to Civil Rule*, 1,

Establishment of Directorate of Social Mobilization

Establishment of the National Electoral Commission

Establishment of the Constitutional Drafting Committee

4th Quarter 1987:

Election to the local governments on a non-party basis

1st Quarter 1988:

Establishment of the National Population Commission

Establishment of the Code of Conduct Bureau

Establishment of Constituent Assembly

Inauguration of National Revenue Mobilization Commission

2nd Quarter 1988:

Termination of the Structural Adjustment Program

3rd and 4th Quarters 1988:

Consolidation of gains of the Structural Adjustment Program

1<sup>st</sup> Quarter 1989:

Promulgation of a new Constitution

Release of new fiscal arrangements

2nd Quarter 1989:

Lift the ban on party politics

3rd Quarter 1989:

Announcement of two recognized and registered political parties

4th Quarter 1989:

Election into local government on a political party basis

1st and 2nd Quarters 1990:

Elections to the state legislatures and state executives

3<sup>rd</sup> Quarter 1990:

Convene the state legislatures

4th Quarter 1991:

Local government elections

1st and 2nd Quarters 1992:

Election to federal legislature and convening of the National Assembly

3<sup>rd</sup> and 4<sup>th</sup> Quarters 1992:

Presidential elections

Swearing in of the new President

Final disengagement by the Armed Forces <sup>8</sup>

*Establishment of Constitutional Institutions*

It is pertinent to note that neither the majority nor the minority report of the Political Bureau recommended the establishment of a Constituent Assembly in its time frame on the transition program. The majority report simply recommended setting up a small Constitutional Review Panel to produce the draft of the amended version of the presidential system of government in consonance with the new philosophy of government. The minority report recommended the following:

- i. Set up a small-sized Constitutional Review Panel to produce the draft of the amended version of the Presidential system of government in consonance with the new philosophy of government in January 1988.

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<sup>8</sup>Ibid., 2-3.

- ii. Organize a referendum on the draft constitution, and enactment of the constitution to be fully effective from October 1992.

The minority report spared a thought for the ratification of the constitution, while the majority remained silent on this important aspect of framing a constitution for the nation. However, the Babangida administration went ahead to provide for the establishment of the Constituent Assembly, and the promulgation of a new constitution in the first quarter of 1989. Babangida was not silent on the ratification of the new constitution. On the one hand, he promised that the people would participate in the ratification of the new constitution. The process he outlined for ratification was the Report of the Political Bureau and the government white paper on the report, the Constitution Review Committee, and the Constituent Assembly. On the other hand, during his address to the Constituent Assembly, he expressed his administration's hope and confidence that, at the end of the exercise on which they were engaged, the Assembly would make a set of recommendations on a Constitution that would usher in and sustain a stable and strong democratic civilian government. Vice Admiral Augustus Aikhomu, the Chief of General Staff, expressed the hope of Babangida's administration that, "The Constituent Assembly will not make recommendations to the Armed Forces Ruling Council."<sup>9</sup> It should be noted that Rotimi Williams, Chairman of the CDC in 1976, did not share the view that the 1978 Constituent Assembly was to make a set of recommendations:

The decisions of the Constituent Assembly on the draft constitution possess legitimacy superior to any decree on the draft ... by any authority. As such, it is not necessary for the federal government to

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<sup>9</sup>*Report of the Constituent Assembly*, xi.

enact any decree before the decisions of the Constituent Assembly should become the supreme law of the land.<sup>10</sup>

The Head of State, Lieutenant-General Olusegun Obasanjo, during the inauguration of the Constituent Assembly on October 6, 1978, indicated that a decree was necessary to make the constitution into law. Williams dismissed the idea of recommendation as erroneous. He felt it would be better to try and convince the federal government of the correct approach to the matter; i.e., the Constituent Assembly should refer to its approval of a reasoned statement on the issue, and such a statement should be forwarded to the Supreme Military Council if the federal government insisted that a decree was needed.<sup>11</sup>

### *Ratification of the Constitution*

In an apparent response to the position held by Williams, Brigadier Shehu Yar'Adua, Chief of Staff Supreme Headquarters, announced that any constitution finally prepared by the Constituent Assembly would not be modified by the Supreme Military Council ... The work of the Council would only be to promulgate a decree turning the constitution into law.<sup>12</sup>

The Babangida administration ratified the constitution as drafted by the Constituent Assembly 1988. To this end, he promulgated Decree No. 12 entitled "Constitution of the Federal Republic of Nigeria (promulgation) Decree 1989," which provided that:

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<sup>10</sup>Mohammed Haruna, *New Nigeria*, 19.

<sup>11</sup>*Ibid.*, 20.

<sup>12</sup>*Ibid.*

Whereas the Constituent Assembly 1988, and as empowered by that Decree, has deliberated upon the draft constitution (except certain provisions thereon) drawn up by the Constitution Review Committee and presented the result of its deliberations to the Armed Forces Ruling Council, subject to such modifications as it deems necessary in future, in the public interest and for purposes of promoting the welfare and fostering the unity and progress of the people of Nigeria ...<sup>13</sup>

By Decree No. 12, the AFRC modified the work of the Constituent Assembly 1988. Section 2(1) provided that there will be a constitution which should be as set out in the Schedule to the Decree. In effect, it was to promulgate as well as ratify or modify the 1989 constitution. It also provided for the continuing governance of Nigeria by decree during the transition to civilian rule.<sup>14</sup>

### *Political Parties and the Transitional Program*

One of the issues dearest to the heart of Babangida was that of setting up two political parties to be entrenched in the Constitution, which would ensure stability. How did the two parties, the National Republican Convention (NRC) and Social Democratic Party (SDP), justify the high hopes of Babangida during the transition program variously described as the transition shuffle,<sup>15</sup> transition jam, or transition log-jam?

The two parties conducted presidential primary elections from August 1, 1992, to October 1992, without success. Not one of the two parties could come up with its flag-bearer, a presidential candidate. Although the NEC and the presidency were committed to ensuring free and fair elections, they did nothing to stop the primaries until shouts of foul became deafening. Vice President Admiral Aikhomu warned that

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<sup>13</sup>*Constitution of the Federal Republic of Nigeria 1989*, 154.

<sup>14</sup>Gboyega Awobonye, Assistant Political Editor, "Editorial," *Sunday Concord*, November 15, 1992, 1.

<sup>15</sup>*Ibid.*

the presidency must be contested and won, or lost honorably. This way was a sequel to what the nation described as the cash-and-carry primaries, money-bag primaries, presidency not for hijacking,<sup>16</sup> and vote purchasing. State governors were alleged to have purchased votes for their favorite presidential aspirants.

Omoruyi, the Director General for the Center for Democratic Studies, declared the following:

Governors [may be] pardoned to save the transition program. The federal government may have spared indicated governors of the sledge hammer for their roles in the cancelled presidential primaries to avoid constitutional crisis and derailment of the transition program. The government had earlier weighed evidence against the governors for awarding figures to aspirants of their choice at the cancelled primaries, but decided against punishing them to save the transition program.”<sup>17</sup>

Onoh, a governor during the second Republic, reacted differently. The *Daily Times* reported Onoh as saying, “As long as the governors are there, every election in this country will be rigged and will be impossible to produce a President in 1993, no matter how we tried.”<sup>18</sup> In another article, Peter Altugo blamed the governors for the botched primaries:

The truth is that the elected civilian governors were every bit as guilty as the Executive Committee of the parties and as some of the 23 aspirants themselves. The truth is that the massive rigging and unpardonable malpractices which took place on election-day could not have been perpetrated without the active connivance of state governors... The simple fact is that most of these governors were sponsored by the presidential aspirants, and they saw the primaries as an opportunity to repay their political debts to their master and to safeguard their own political future. Surely if we decide that the party executives and presidential aspirants are guilty of subverting our

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<sup>16</sup> “Front Page Comment,” *Nigerian Tide*, December 13, 1992, 1.

<sup>17</sup> “Commentary,” *Sunday Concord*, November 15, 1992, 19.

<sup>18</sup> “Onoh Wants Governors Sacked,” *Daily Times*, November, 28, 1992, 2.



democratic aspirations, we cannot absolve many of our governors of the same crime.<sup>19</sup>

Osifo Whiskey blamed the rigging of the August 1, 1992, primaries on a litany of rough tactics:

...voting without accreditation, multiple voting, transportation of voters from one ward to another, use of padded registers, bribing of electoral officials and falsification of results – all combined to aim the August 1, 1992 presidential primaries into a colossal fraud.<sup>20</sup>

Lekan Otufodumivin blamed the botched primaries on the NEC. A heavy blow was dealt on the transition timetable. Babangida once more changed the handover date (by the military to civilian) from January 3 1992 to August 27 1993, the eighth anniversary of his palace coup. The assistant political editor of the *Sunday Concord* described the change as the “transition shuffle.”<sup>21</sup> *Newswatch* screamed, “Transition in turmoil,” and “Transition at cross-roads.”<sup>22</sup> *The Guardian* asked, “Has the transition suffered one postponement too many?”<sup>23</sup> *The Nigerian Economist* described the change in the transition as the shock of the decade:

Uneasy handover date: Barely two months to the handover date, President Babangida extends the transition period by another 8 months and bans all presidential aspirants. Political observers, politicians, and eminent Nigerians spit fire and doubt if Babangida will ever hand over.<sup>24</sup>

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<sup>19</sup>“What About the Governors?” *National Concord*, November 30, 1992, 2.

<sup>20</sup>“The Rigging Game,” *Tell*, August 24, 1992, 20-25.

<sup>21</sup>*Sunday Concord*, November 15, 1992, 7.

<sup>22</sup> *Newswatch*, October 26, 1992, cover and 10.

<sup>23</sup>*Guardian*, November 30, 1992, 12, 22.

<sup>24</sup>Innocent Ononiwu, “Shock of the Decade: IBB for 8 years rule,” *Nigerian Economist* December 7, 1992, 29.

After dissolving the executives of the two parties, the NRC and SDP at all levels – national, state, LGA and wards, Babangida appointed caretaker committees at all levels. The new transition timetable read as follows:

11/11/92	Complete setting up Caretaker committee at all levels
23/11/92	Print membership cards and registers
15/12 – 23/92	Distribute membership cards and registers
24/12/92 – 3/1/93	Christmas break
4/1 – 10/93	Register party members
11/1 – 17/93	Call for all prospective aspirants to submit applications to NEC through National Caretaker Committees for screening
18/1 – 31/93	Screening of all aspirants
6/2/93	Ward Congress
20/2/93	Local Government Congress
6/3/93	Ward Congress
6/3/93	State Congress
7/3 – 26/93	State flag bearer campaign for national conventions
30/3 – 11/4/93	Caretakers handover
4/5 – 18/93	Elected executives prepare for electioneering campaigns
19/5 – 11/6/93	Electioneering campaigns
12/6/93	Elections
13/6 – 20/93	Declaration of results
21/6 – 26/8/93	Swearing in of election tribunals

27/8/93                      Swearing in of the President.<sup>25</sup>

To keep the transition on course, NEC recommended to the AFRC and it accepted option A4, a process by which a state's flag-bearer of each party would proceed, in the first instance, through the use of ward, then local government areas and the State Congress. As many as 30 states and the federal territory of Abuja could each produce a State flag-bearer. They would then meet at each party's conventions to elect the flag-bearer of the party. Nigeria finally achieved this on March 28, 1993, with Alhaji Bashir Tofa as NRC Presidential Candidate and Chief M. K. O. Abiola for the SDP.

It may now be said that option A4 was a success. Christians were quick to note that the two Presidential candidates were Muslims. It was hoped that their running mates might be Christians. Although the Nigerian federal character enshrined in the Constitution did not mention religion, convention demanded the balancing of presidential tickets on a religious basis, as stated in the Constitution:

Article 15(3) – The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to commend national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that government or in any of its agencies.<sup>26</sup>

The big test for Nigerians' resolve to conduct free and fair presidential elections came up on June 12, 1993, when the country went to the polls to elect a president. It was a different ball game from that of party primaries.

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<sup>25</sup>“IBB's New Agenda,” *Newswatch* November 30, 1992, 15.

<sup>26</sup>*Constitution of the Federal Republic of Nigeria 1989*, Article 15(3)

*The Judiciary and Fundamental Human Rights under the Military*

Section 51 of the Criminal Code dealt with seditious publications, and section 375 dealt with the publication of defamatory matters. In the statute book, offences are listed as “defamatory offensive publications” in Decree No. 44 of 1966. The constitutionality of the above obnoxious laws derogates from section 36(1) of the 1979 Constitution, which states that every person shall be entitled to freedom of expression, including freedom to hold opinions and receive and impart ideas and information without interference.

The constitutional implication of Section 35(1) vis-à-vis section 51 came up for judicial interpretation in the case of *Arthur Nwankwo V. The State* (1985) 6. NLCR 228. The appellant, Arthur Nwankwo, was summarily tried by an Onitsha High Court in Anambra State for the offense of publishing and distributing seditious publications. The charges were laid under section 51(1) (c) of the Criminal Code Law (Cap 30, Laws of Eastern Nigeria 1963 applicable to Anambra State). He was charged along with Front Line Group Publishers, Limited. The appellant had written a book entitled, *How Jim Nwobodo Rules Anambra State*. The book was alleged to be highly seditious against the then governor of Anambra State, Jim Nwobodo, as well as its government. The trial court convicted the appellant, but the Appeal Court upheld the appeal and set aside the conviction. Thus, the words of the court settled, for the time being, the constitutional guarantee of the system in the following statements:

The law of sedition is a derogation from the freedom of speech guaranteed under the Constitution and is therefore inconsistent with the Constitution. Nigeria is no longer the illiterate society the colonial masters had in mind when the law of sedition was promulgated.

Furthermore, the law of sedition is a deadly weapon at the will of a corrupt government or a tyrant.<sup>27</sup>

Until the Supreme Court says otherwise, the judgment of the Appellate Court binds all lower courts. As a matter of constitutional urgency, the Law Reform Commission has been called upon to remove from the statute books such offenses as sedition and criminal libel in view of sections 36 and 41 of the 1979 Constitution.

The place of fundamental rights under the military will now be examined. The 1979 Constitution guarantees the right to a fair hearing under its Article 33(1). The case of Zango-Kataf, resulting from communal or religious clashes or both that left many dead, throws light on the place of these fights in the Constitution. The principal personality among the accused was retired Major-General Zamani Lekwot. Femi Falana stated as follows:

Following allegations of massive violations of the right of fair hearing of the Kataf leaders ... at the Okadigbo Special Tribunal last year, the accused persons were compelled to seek redress in the Kaduna High Court .. The Court granted them leave to enforce their fundamental right. But the prayer for a stay of further proceedings of their trial was curiously rejected.<sup>28</sup>

The accused persons appealed to the court of Appeal. The leading counsel, G. O. K. Ajayi (Senior Advocate of Nigeria), argued that the Civil Disturbance Special Tribunal headed by the Honorable Mr. Benedict Okadigbo was not constituted in such a manner as to guarantee its independence and impartiality as stipulated by section 33 of the 1979 constitution. Ajayi concluded that, to that extent, the Okadigbo judicial tribunal was illegal and unconstitutional.

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<sup>27</sup>Arthur Nwankwo V. the State (1985) 6. *NLCR* 228.

<sup>28</sup>Femi Falana, "Constitutional Law," *Guardian*, April 14, 1993, 8.

J. H. Okdoo (also Senior Advocate of Nigeria) for the government submitted that jurisdiction of the court had been ousted by the combined effect of Decree 7 and 13 of 1984. By a majority decision of two to one, the Court of Appeal struck out the case for want of jurisdiction. The opinion of dissenting Justice Akpabio was that Section 5 of the new Decree 21 completely wiped out all ouster clauses in any Act embodied in the 1990 volumes of the Law of the Federation. In essence, the position was that, as of the dissenting opinion, no previous decree embodied in the 1990 volumes of the laws could claim to be superior to the 1979 constitution. Therefore, the corollary is true that, since the application before the High Court in Kaduna was brought after the promulgation of the new law of Nigeria (1990), the said High Court had jurisdiction to entertain the matter before it. All previous court decisions that gave supremacy to pre-1990 decrees of the federal military were no longer valid after 1990.

Dissatisfied with the majority decision of the Court of Appeal, the applicants further appealed to the Supreme Court. Disturbed that the highest court of the land might uphold Justice Akpabio's minority judgment, the federal government hastily rolled out the Revised Section (Laws of the Federation of Nigeria supplementary provisions), Section I Decree No. 55 of 1992:

Section I – All laws promulgated by the Federal Military Government on or after 31 December 1983 shall continue to be known, referred to, cited, and have effect as a Decree.<sup>29</sup>

The defense counsel was convinced that the decree was “directed at the Kataf leader.” Therefore, they withdrew their appearance before the Okadigbo Judicial Tribunal. Ajayi wrote to his clients, the accused persons:

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<sup>29</sup>*Laws of the Federation of Nigeria*, supplementary provisions, Section I Decree No. 55 of 1992

I have read and reread Decree 55 of 1992. The effect is that the accused person cannot challenge the proceeding of this tribunal; it means that the accused persons are under the mercy of the tribunal. Having regard to my professional conduct and stand to defend the fundamental rights of Nigeria, I therefore feel that this tribunal is not competent for me to stand to discharge my professional duties.<sup>30</sup>

Decree No. 55 is nothing but an amendment of the Revised Edition (Laws of the Federation) Decree No. 21 of 1990. It is pertinent to mention here that, as part of the preparation for a diarchical government headed by General Babangida, all decrees enacted on or after December 31, 1983, were in August 1990 converted and named Acts of Parliament.

Akpabio, distressed by the anomalous legal position, made the following remarks:

Everyone knows that an “Act” is a law passed by the National Assembly while Decree is a law enacted by the Federal Military Government during a military regime. The present 1990 volumes of the Laws of Nigeria have obviously tuned the anticipation of the incoming civilian rule. It may be that the move has been rather premature as such re-enactment should have been left to the National Assembly under a civilian regime, as was done in 1979/80. But having gone out of their way to gratuitously re-enact all the pre-1990 “Decrees” into “Acts,” the net result is that all such Decrees are now dead and have lost their invincibility. We cannot have the same law being both dead and alive at the same time.<sup>31</sup>

The Supreme Court has held firm in a plethora of decisions that all acts of parliament which are inconsistent with the provisions of the 1979 Constitution are null and void to the extent of their inconsistency.

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<sup>30</sup>Falana, “Constitutional Law,” 8.

<sup>31</sup>Ibid.

The military government of Babangida saw the opportunity provided by the Zongo-Kataf case to return to the status quo ante. Decree No. 55 has, therefore reiterated the superiority of decrees over the Constitution.

Section 2 – For the avoidance of doubt, if any law enacted before December 31, 1983 including the constitution of the Federal Republic of Nigeria 1979, is inconsistent with any Decree promulgated by the Federal Military Government, the Decree shall prevail and that other law shall to the extent of the inconsistency be void.<sup>32</sup>

It may be argued that the ouster clause contained in section 2 is limited to anything done or purported to be done under or pursuant to that Decree. However, the impression lingers that it has totally wiped out fundamental rights in Nigeria.

The Zango-Kataf case shored up the unenviable position of the judiciary under the military dispensation. The Zango-Kataf riots were regarded by many Nigerians as based on religious intolerance. Zamani Lekwot and six others had been arraigned before the tribunal on a 22-count charge of unlawful assembly, rioting, disturbance of public peace, and culpable homicide. Virtually all the charges were dropped, except that of culpable homicide. The Okadigbo tribunal found six of the seven accused persons guilty. To each of the six persons, he said, “you shall be hanged by the neck until you die.”<sup>33</sup>

There were mixed reactions to the sentence. Fred Ohawahwa cried out, “Lekwot, five others have been sentenced to death for culpable homicide. Are they really guilty as charged?”<sup>34</sup> The influential magazine, *TSM*, on its cover page screamed,

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<sup>32</sup> *Laws of the Federation of Nigeria*, supplementary provisions, Section I Decree No. 55 of 1992.

<sup>33</sup> Fred Ohwahwa, “A Macabre Drama,” *Newswatch*, February 15, 1993, 9.

<sup>34</sup> *Ibid.*, 26.



“Justice Okadigbo Art. 35(1), every person shall be entitled to freedom of thought, conscience and religion. A judicial terrorist or victim?”<sup>35</sup> “What manner of justice?” asked *African Concord*.<sup>36</sup> Ajayi remarked, “Why is it necessary to make a group of persons more powerful than the Supreme Court, the highest Court in the Land? What’s government looking for? What is their motive?”<sup>37</sup> However, he seemed to answer his own questions:

On the composition of the Tribunal, it is true that they made Okadigbo, a Christian, Chairman. You have a senior advocate of Nigeria, Graham Douglas, a Christian. Mallam Molufashi, who is deep Northerner from Katsina; Hajia Tani Yusuf from Kano State; M. B. Wali also Muslim from the North. Then you have Colonel Abubakar Yusuf, also a Muslim, hard core Northerner, and have Oyunba Adedoyin from the South ... Now if you want to bring Hausas ... into this tribunal, it is only right that you also bring somebody from Kataf, because it is a communal and religious riot. Nobody believes, certainly the Kataf do not believe, that the group can give them justice. If there is anybody who feels that in the circumstances he will feel that he can get justice, let him say so.<sup>38</sup>

The Nigerian Constitutions of 1979 and 1989, as well as the Constituent Assemblies 1978 and 1988, did not find an answer to Nigeria’s religious intolerance. Article 35(1) of the 1979 Constitution both provide that every person shall be entitled to freedom of thought, conscience, and religion. Yet the will of the people to uphold the provisions of the constitution on ethnicity and religion remains a mirage, and deals a heavy blow to the National Question.

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<sup>35</sup>Cover page, *TSM*, February 16, 1993.

<sup>36</sup>“What Manner of Justice?” *African Concord*, February 15, 1993, 27.

<sup>37</sup>*TSM*, March 7, 1993) 29.

<sup>38</sup>“Cover Story,” *African Guardian*, January 25, 1993.

When Murtala Mohammed ousted Yakubu Gowon in a palace coup d'état (1975), Murtala suspended the 1963 Constitution, although he retained Chapter III, which embodied the Fundamental Human Rights. The CDC and the Constituent Assembly 1978 enshrined these rights along with additional ones.

In 1985, General Ibrahim Babangida seized power in a palace coup that ousted Mohammadu Buhari. He, too, suspended the 1979 Constitution but left the Fundamental Human Rights operational. The CRC and the 1988 Constituent Assembly retained the Fundamental Human Rights under Chapter IV of the 1989 Constitution.

On the enforcement of Fundamental Human Rights in Nigeria, the Civil Liberties Organization (CLO) reported:

The rule of law suffered numerous breaches in 1991 as the Government continued to indulge in acts of executive lawlessness. The cases range from contemptuous disrespect for court orders retroactive legislation, to the promulgation of absolutist Decrees with ubiquitous ouster clauses.<sup>39</sup>

In a case involving one of the political parties, the NRC, a Lagos High Court Judge restrained the party from conducting fresh primaries. However, the order was flouted by the National Executive Committee of the party as it conducted fresh primary elections on November 2, 1991. The counsel to the plaintiff, Mr. Godwin Omamuli indicated his intention to file committal proceedings against the party. The Federal Government frustrated that intention by promulgating Decree No. 48, which ousted the power of courts to entertain cases of individuals aggrieved by election results.

Cases of retroactive legislation have been recorded during the period of this study. Following the alleged massive rigging that characterized the gubernatorial

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<sup>39</sup>Civil Liberties Organisation, "A Harvest of Violations," *Annual Report on Human Rights in Nigeria* (1991), 124.

primary elections held in October 1991, many candidates challenged the results in courts and were granted interim injunctions restraining their parties (NRC and SDP) from presenting their candidates for the December 14 governorship elections pending the determination of the substantive suits.

On November 25, 1991, the government promulgated the Participation in Politics and Elections (Miscellaneous provisions) Decree No. 48 of 1991. This empowered the National Electoral Commission (NEC) to disallow anyone from standing for an election if it considered his activities to be inimical or not consonant with public order, public morality, law and order.

The CLO reported the promulgation of 50 decrees, most of which represent massive erosion, abuse, and abridgement of the fundamental rights of the citizens as stated in the 1979 Constitution of the Federal Republic of Nigeria. These decrees not only ousted the relevant sections of the Constitution with which they were in conflict, but also ousted the jurisdiction of the judiciary from inquiring into actions taken in pursuance of them.

Decree No. 2 of 1994 – The Vice-President is empowered to detain without trial any person(s) considered to constitute a threat to the national security or who has/have contributed to the economic adversity of the nation.

Decree No. 9 of 1991 – Courts are banned from hearing any action relating to matters before military tribunals

Decree No. 48 of 1991 – Participation in politics and elections (miscellaneous provisions)

Section 1 – Notwithstanding any provisions of the Constitution of the Federal Republic of Nigeria 1979, as amended, or any other enactment, law, instrument or document, including the constitutions of National Republic Convention and the Social Democratic Party, a person shall not be allowed to stand for an election if the Commission (National Electoral Commission) is of the opinion and if it declares that he is not

a fit and proper person to stand for such election or to hold an elective office, on any ground whatsoever.

This last decree flagrantly ousted the relevant sections of the 1979 Constitution of the Federal Republic of Nigeria, as amended, which deals with the clearance of candidates for elections. This disregard for the rule of law by the executive arm of the government was so disturbing that a Benin High Court Judge, Justice Omo-Asege, on August 15, 1994 proposed the establishment of an independent national commission to enforce certain categories of court orders. The learned judge stressed that the body would be independent of the executive and legislative arms of government and answerable to the Chief Justice of the Federation. He decried the frequent disobeying of court orders by government functionaries, especially the police, members of the Armed Forces, and very senior civilian servants. He concluded that it is indefensible for a state to expect obedience of laws from her citizens while she does not obey the laws on her own part.

On November 10, 1991, the Nigerian Bar Association called on political party leaders to desist from disobeying court orders, saying that it might derail the Third Republic. The association's former president and now Minister of Justice, Mr. Clement Akpanmbgo, is reported to have observed that politicians should respect legal documents if the Third Republic is to survive, and that, whether it is valid or void, once a court order is served it must be obeyed. The person served can ask that the order be set aside. It is interesting to note that the Justice Minister, when faced with a spate of High Court actions in the wake of the June 12, 1993, presidential election, could no longer match his rhetoric with action.

*The National Assembly and the Politics of the Transition Program*

In his broadcast to the nation on November 17, 1992, President Babangida announced an extension by 8 months (from January 2, 1993, to August 27, 1993) of the transition to civil rule program. The National Assembly was inaugurated by him on December 5, 1992 (6 months after they had become members, 589 for the Lower House and 91 for the Senate). Babangida appointed two other bodies: the National Defense and Security Council (NDSC) and a 27-member Transition Council, with Ernest Shonekan as Chairman or “Prime Minister.”

The question then arose as to how the National Assembly would coexist and function with Babangida and two other bodies. Babangida had the answer. A few days after the inauguration of the National Assembly, the Federal Military Government published the National Assembly (Basic Constitutional and Transitional Provisions) Amendment Decree No. 53 of 1992 which specified the Assembly’s powers. Of the 38 subjects areas listed in the 1989 Constitution on which the Assembly can legislate, the Decree ordered 29 no-go areas, which included key issues of governance: government accounts, currency, defense, elections, external affairs, trade, and labor. Even worse, the Decree provided that the Assembly could legislate only in the areas of antiquities and monuments, archives, public records, and exhibition of cinematographic studies. According to Decree 53, bills passed by the Assembly on these matters had to be approved by the NDSC and endorsed by the President.

Mamud Jega noted in an influential magazine, *Citizen* that the Decree “...violated the president’s pledge at the inauguration ‘that the learning experience in

legislative duties will not be jettisoned.”<sup>40</sup> There were other reactions. The Committee for the Defense of Human Rights demanded that the Council be abolished as it was only set up to “..erode the legitimate power of the National Assembly, thereby depriving the electorate from the right to self-determination.”<sup>41</sup> Claude Ake linked his criticism of emasculating the National Assembly with the acceptance of Nigerians of the political parties imposed by the Babangida regime: “The transition program is a false start in the nation’s search for democracy. The military has denigrated politics, and politicians ... undermined their self-esteem by accepting to work in parties imposed by the regime.”<sup>42</sup>

The test of legislative and executive muscles occurred when the “Prime Minister,” Ernest Shonekan, presented the 1993 budget to the National Assembly. The Senate boycotted the session, while the House of Representatives was at hand to listen to the presentation. The National Assembly was not competent to participate in matters touching on government finance, which was one of the no-go areas.

### *The Military in Nigerian Politics*

The Nigerian military was modeled on that of the British, which practiced strict obedience to authority. The post-independence Armed Forces of Nigeria were, like their imperial counterparts, subordinated to the new civilian regime – which took the military for granted. They were hardly considered in the political equation of Nigeria. The rank

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<sup>40</sup>“Transition 1993, Trouble Brews,” *Citizen*, January 4, 1993, 10

<sup>41</sup>*Ibid.*, 11.

<sup>42</sup>*Ibid.*

and file still begrudged their status in the Nigerian sociopolitical setting, which not surprisingly led to most coups in Nigeria being planned and executed by majors.

The ostensible reasons usually given for staging military coups d'état especially in Third World countries, are to eradicate bribery, corruption, put an end to tribalism, regionalism, or sectionalism; free the masses from misery, poverty, and squalor; healing rifts in the country and provide purposeful leadership; and enhance the image of the country in the eyes of the international community... The January 1966 Nigeria coup-makers were no exception in shouting seemingly altruistic [words] such as these<sup>43</sup>

Ben Gbulie, an insider of the January 1966 coup, advanced similar reason for military intervention in politics. He particularly blamed such intervention on corrupt politicians as well as on tribalism and ethnicity. However, the 1966 coup was seen by some officers as tribalistic. It was clear that no meaningful Igbo politician was killed as a result of the coup. Aguiyi Ironsi, who became the military head of state, was murdered by the northern military command in what appeared to be a vengeful coup. That coup brought Yakubu Gowon to power. The civil war that followed during Gowon's administration is now history, and will not be discussed in this study. Gbulie decried the reasons or even excuses for military intervention:

For far too long the country had been at the crossroads, tottering dangerously on the brink of disaster. The political situation was gradually but surely getting out of hand. But if the prevailing political situation had constituted an unpleasant jar to Nigeria's nerves, the stench of corruption in high places had given her a racking stomach-ache. The politicians and public officers had indeed let the nation down... Many of public servants had fraudulently enriched themselves with the ten percent takings and kickbacks from contractors... By far the most dreadful of our country's insuperable monster was tribalism.<sup>44</sup>

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<sup>43</sup>Manisara, *The Five Majors*, 7.

<sup>44</sup>Gbulie, as quoted in *Ibid.*, 7-8.

As for the future role of the military, the clamor by Nigerians for military disengagement and return to civilian rule is deafening. Babangida's perpetual Transition Program is not indicative of military's appreciation of the need. The country waits helplessly. Ruth First spoke the mind of many when she said, "As for rule by soldiers, I believe this is by its nature an emergency action that can have no permanence. The soldiers hold the ring while new internal power amalgams are arranged. They achieve no real alternatives, only postponement of solutions."<sup>45</sup> Finally, I conclude with a quote from Ataturk: "A soldier's duty cannot be performed with talk and politicking."<sup>46</sup>

*The Military in the Report of the Political Bureau*

The Political Bureau had other ideas on the reasons for military intervention. It blamed the nation's sociopolitical and socio-economical environment. The *Report* stated that ethnicity/tribalism fed on "underdevelopment," which in turn created a crisis of development. Under such circumstances, Nigeria would run for cover under their numerous ethnic unions, who were poised to snatch the national cake. According to the Bureau, military intervention is thus partly a product of the crisis of development, and such crisis is promoted and engendered by the corporate and bureaucratic orientation of the military and the sociopolitical and socioeconomic environment. The Report further asserted that intervention was in most cases goaded by organizational and collegial conflicts within the military, and aggravated by internal rivalries and struggle within

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<sup>42</sup> Ruth First, *The Barrel of a Gun: Political Power in Africa and the Coup d'Etat* (London: Allen Lane, 1970).

<sup>46</sup> Quoted in Dankwort A. Rostow, *A World of Nations: Problems of Political Modernization* (Washington, DC: the Brookings Institute, 1967), 170.



the military establishment in the quest for position of office and status on the one hand, and between the military and post-independence civilian regime on the other hand.<sup>47</sup>

The Report is as refreshing as it is revealing. The military tends to blame interventionism on all but itself. The Report looks within the military establishment itself to locate the reasons for the military coup. It must be remembered that General Babangida's unmitigated lashing of the politicians was an invitation for military intervention.

We are all familiar with the political conditions, which brought about military regimes. Invariably, military administrations have come about as a result of a bad government; indeed, our present economic predicament can be attributed to the nature and practice of partisan politics. It has contributed, in part, to the increasing cynicism and apathy of individuals, economic mismanagement, as well as the apparent social chaos and disorder in our society. It has also adversely affected our capacity, as a nation, to realize our vast economic potential.<sup>48</sup>

The Report of the Political Bureau identified the following negative political consequences of military rule:

- i. Regimented governance.
- ii. Limitations on the opportunities available for the individual's voluntary and effective participation in the affairs of state
- iii. The emergence of an authoritarian culture which compels people to behave in a given way more out of fear than as a result of genuine interest or belief in the military art of governance.

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<sup>47</sup>*Report of the Political Bureau*, 152.

<sup>48</sup>*Ibid.*, 4.

- iv. Selective civilian elite injection into the military administration, which limits opportunities for the masses for self-development and self-actualization through participation in matters that affect their life and destiny. The Ernest Shonekan Transition Council is an eloquent testimony for this charge.
- v. A new political equation characterized by the class syndrome – the peasants, the workers, the bourgeoisie, and the military.<sup>49</sup>

### *Summary*

The Transition to Civilian Rule program of General Babangida was not successful. He probably did not want the program to succeed. Although Babangida urged the Political Bureau to provide a true sequence for the transition to be achieved by October 1, 1990, he did nothing to actualize it. Even the Bureau in its wisdom cautioned against a handover program of the 1979 experience. There was a division among members of the Bureau. The minority preferred October 1, 1992 as the terminal date of the transition. The minority won the day. However the Transition Program was extended to August 27, 1993. Two Political Parties – Social Democratic Party (SDP) and National Republican Convention (NRC) were created by the Babangida administration. This was another demonstration of his dictatorial tendencies. In Chapter VII we shall consider Constitutionalism and its attributes.

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<sup>49</sup> Ibid., 154.

## CHAPTER VII

### CONSTITUTIONALISM

Constitutionalism means that the power of leaders and government bodies is limited, and that these limits can be enforced through established procedures. As a body of political or legal doctrine, it refers to government that is devoted to:

- (i) The good of the entire populace
- (ii) The preservation of the rights of individual persons.

In order to achieve these noble goals towards the populace, constitutional architects emphasized checks on the power of each branch of government, equality under the law, impartial courts, and separation of church and state.

The military regime is in no position to operate a system as embodied in our explanation of constitutionalism. Dictatorship is their stock in trade. The clamor for Sharia in our legal system challenges the principle embodied in constitutionalism. Of the constitutions within our contemplation - the 1979, 1989 and 1995 – that of 1989 was most unconstitutional. Its composition was most undemocratic. This constitution was anything but an expression of the popular will of Nigerians.

Members of the 1978, 1988 and 1994 Constituent Assemblies were elitist. There were no market men or women. It is well accepted that these Nigerians constitute the majority of the nation. They constitute the lower workforce in the country. Yet they are sidelined in matters as fundamental as crafting a constitution for Nigeria.

Africa Dependency and Dependent Constitution will be considered below in view of their impact on modern constitutions – from the Greeks to the western world

and back to Africa. In other words, this section will discuss the African origins of western democracy.

*Critiques of the 1989 and 1995 Constitutions*

The 1989 Constitution became operational on August 27, 1993, when it was hoped that the military would hand over power to a civilian administration. Babangida's government had already subjected the document to so many amendments as to render it unrecognizable by its framers. *The Champion* took time to condemn these incessant amendments:

In terms of amendments, the 1989 Constitution may have achieved a dubious distinction worthy of a place in the Guinness Book of Records. With the level of alteration of the document, it is unlikely that members of the Constituent Assembly who processed the raw materials of the Constitution Review Committee will ever agree that what is now called the constitution bears any resemblance to the draft they submitted to the Armed Forces Ruling Council about three years ago.<sup>1</sup> Ideally, a constitution should be an embodiment of the sacred laws of a people designed to provide a ground post for the orderly governance of society. It also represents the high point of laws given by the people to themselves. On these scores, the 1989 constitution has failed woefully to be an expression of the popular will of Nigerians.

Mere administrative organizations of the Babangida regime competed for a place in our constitution, as recalled by the *Champion*:

Bad as it is, we regard as preposterous and ill-advised the planned entrenchment of the Federal Road Safety Corps in the Constitution. We treat it as an absurdity in the mood of recent advocacy for the entrenchment of the First Lady, Better Life for Rural Women (a purported brainchild of the First Lady), the Directorate of Food, Roads, and Rural Infrastructure, MAMSER, and sundry organizations into the Constitution of the Federal Republic.<sup>2</sup>

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<sup>1</sup>"Our Constitution," *Champion*, November 5, 1992, 13.

<sup>2</sup>Ibid.

Mamser was a body created by the Babangida's administration.<sup>3</sup> Some of its functions are listed below:

- a. Establish an appropriate framework for the positive mobilization of all Nigerians to economic recovery and development, and a new social and political order;
- b. Awaken the consciousness of all categories of Nigerians to their rights and obligations as citizens of Nigeria;
- c. Inculcate in all Nigerians the value and spirit of civil responsibility, commitment to social justice and economic self-reliance through mobilization and harnessing of their energies and natural resources into productive use.

*The Champion* did not accept that the much-vaunted learning process of Babangida justified the mockery made of the Nigerian constitution. It described any attempt to entrench administrative measures into the republic's constitution as evidence of fear by the present government that its successor may not be favorably disposed to them. *The Champion* concluded that, "the constitution has already turned into a receptacle for every manner of junk"<sup>4</sup>

The chairmen of the local government councils added a new twist to the already over trodden road to amending the 1989 Nigerian constitution. They seemed to revert to the carrot-and-stick tactics. *The Guardian* read the pulse of the nation in its editorial:

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<sup>3</sup>*Transition to Civil Rule*, vol. 1, 33.

<sup>4</sup> "Our Constitution," *The Champion*, 13.

A fortnight ago, leaders of the country's local government councils, operating under the national conference of local government council chairmen of Nigeria, conferred on President Ibrahim Babangida the title of "Grand Redeemer of Local Governments" in Nigeria. Also honored were the vice-president, Admiral Augustus Aikhomu, who got the title, "Defender of Local Government in Nigeria," and the sultan of Sokoto, Alhaji Ibrahim Dasuuki, who got the title, "Patron of Local Government in Nigeria."<sup>5</sup>

But were there any political strings attached to these awards? *The Guardian* provided an answer:

What is suggested here, even to the most charitable and patriotic citizen, is that the Federal Government had been bribed by the country's local government council chairmen with awards which sound so embarrassing, sycophantic, and which were designed precisely for this purpose. The question is whether the President, the Vice-President, and the Sultan ought to have accepted the awards and if they did, whether the requests tied to them ought to have been granted. Our answer to each of these questions is in the negative.<sup>6</sup>

Of all the requests by the council chairmen, the most disturbing related to extension of the council's tenure by twelve months. In December 1990, they were elected into office for a period of two years. However, before the expiration of their tenure, the federal government extended their mandate by two months. With another extension, they would be in office for four years as against the two years allowed by the 1979 constitution. Were they shying away from facing the electorate?

*The Guardian* switched its searchlight to the 1989 constitution in its entirety. It expressed the hope that, by the time the military administration disengaged on August 27, 1993, a clean copy of the Nigerian constitution would have been produced. It is possible that the council chairmen were exploiting the confusion which surrounded the

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<sup>5</sup>"Council Chairmen against Democracy," *Guardian*, April 20, 1992, 8.

<sup>6</sup>Ibid.

status of the Nigerian constitution. This hope expressed by *The Guardian* newspaper was not realized as General Sani Abacha's military regime took over the reigns of power in Nigeria in November, 1993. He quickly established a Constitution Drafting Committee that prepared the ground for the Constituent Assembly of 1994/95 that drafted the 1995 Constitution.

The ills of the 1989 Constitution were reasonably eliminated. Again, it did not qualify as the constitution of the people, by the people and for the people. Of all the Nigerian Constitutions from 1960 to 1995, it was the only one that forbade self-succession by the Chief Executives – President and the Governors.

#### *Impeachment Provisions in Nigeria*

Another disturbing characteristic, which the Nigerian Constitution 1979 and 1989 embodied, was that of impeachment. This was no innovation for Nigeria. The U.S. Constitution has had it for over 200 years without abuse. The two Constituent Assemblies in question, despite their avowed wisdom, did not succeed in making the provision work in the spirit of the founding fathers.

Under the 1979 constitution, the Governor of Kaduna State, Balarabe Musa, was removed by the process of impeachment. Section 170(2) (4) provided that a motion of the House of Assembly on an allegation (of gross misconduct) be investigated and should not pass unless supported by the votes of not less than two-thirds of the members of the House of Assembly. However, an attempt by the opposition (the defunct NPP, which became the UPN) to impeach Governor Melford Okilo of Rivers State was defeated. There was a low incidence of cases leading to impeachment of Assembly officials.

There appeared to be sanity in the innovation of the impeachment clause in the second Republic (1979-83). The same could not be said of the Third Republic which was put in place in 1992. More than one-third of Nigeria's thirty states invoked the impeachment clause. The frequency of its invocation in local government councils and state assemblies prompted Chukwudi Nwabuko to ask whether assemblymen abandoned lawmaking for impeachment.<sup>7</sup>

#### 1989 Constitution

Section 90(2) – The Speaker or Deputy Speaker of the House of Assembly shall vacate his office.

90(2)(c) – If he is removed from office by a resolution of the House of Assembly by the votes of not less than two-thirds of members of the House.

Nwabuko observed that, following their inauguration in January 1992, the changing musical chairs in the House of Assembly led to a high turnover of ex-speakers, ex-deputy speakers, and other officers who were impeached, suspended, or forced to resign from office for one reason or another.<sup>8</sup> He gave a catalog of states that experienced the impeachment bug, and stated, "From Maiduguri to Calabar, Sokoto to Benin, the impeachment bug had bitten many an official of State Houses of Assembly."<sup>9</sup>

A minority Chief Whip of the NRC justified the impeachment harvest as due to the autocratic and self-serving tendencies of officials. In yet another reaction to

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<sup>7</sup>Chukwudi Nwabuko, "Assemblymen Abandon Lawmaking for Impeachment," *Sunday Champion*, November 29, 1992, 11.

<sup>8</sup>Ibid.

<sup>9</sup>Ibid.



impeachment, Ujoh reported, “Inasmuch as the legislators have a constitutional right to invoke the provisions of the Decree 50 of 1992 Section 4(2)(c) on the removal of speakers, the right should be exercised with restraint.”<sup>10</sup> Here again is practical demonstration that Nigeria’s problem as a nation is not the absence of constitutional provisions but the lack of will on the part of the operators to uphold the spirit and letter of the constitution.

*The Socio-Economic Make Up of the Constituent Assemblies*

Controversy surrounded the form of the 1978 Constituent Assembly. The 1988 version was not also spared from controversy. These will be discussed later. For now, the study has established that the CDC was the root from which the Assemblies sprang. Then the CDC, which reviewed the 1979 Constitution, prepared the way for the work of the Constituent Assembly 1988. The study will consider the composition of the four bodies: the CDC 1976, the Constituent Assembly 1978, the CRC 1987, and the Constituent Assembly 1988. The composition of the CDC came under serious criticism because of its elitist character. The 49 members comprised 18 from the universities, 6 legal practitioners (Attorneys), 12 business executives, 5 senior public servants, 5 state commissioners, one medical doctor, one military officer, and one state judge; 40 percent of the members had university education. As can be seen, there were no workers, farmers, or artisans. The *Sketch* observed, “The Committee therefore represented what is usually referred to as the cream of Nigeria’s elite.”<sup>11</sup>

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<sup>10</sup>Emmanuel Ujoh, “Assembly Clerks Decry Speakers’ Impeachment,” *Vanguard*, February 15, 1991, 5.

<sup>11</sup>“Adejare,” *Sketch*, June 1, 1977, 5.

It was with the backdrop of the above criticisms that the Federal Military Government arrived at the composition of the 1978 Constituent Assembly with 203 elected members:

The formula of electing members of the Constituent Assembly was arrived at on the basis of five on equality (of state) and the rest on population. Chief Rotimi Williams, Chairman of the Constitution Drafting Committee and Chairman of seven subcommittees of the CDC, would also serve on the Constituent Assembly. This was to provide continuity and to enable them to clear some points that may be raised during the debates on the constitutions by the Constituent Assembly. The Supreme Military Council would also nominate people to represent special interests, who would not be more than 10 percent of the total elected members, into the Constituent Assembly.<sup>12</sup>

The dominance of the elite members of the CDC on the Constituent Assembly 1978 cannot be denied. The result of the election to the Constituent Assembly held on August 31, 1977, was disappointing for its non-inclusion of the typical farmers and trade unionists; furthermore, female members were few in number. The nominated class had an over representation of the affluent class. The use of local government councilors as the Electoral College was seen as a deliberate attempt to facilitate passage of the Constitution for its elitist members of the CDC.

Naturally, many articulate citizens of the country are getting hardened in their belief that the use of Councilors as the electoral forum for the Assembly was calculated to ensure that the draft constitution had an easy passage without any radical changes, since the mixed economy which it recommended suits the moneyed class. The fact that majority of the nominated twenty-two members either belong to the old brigade or the moneyed class can only go to confirm this belief.<sup>13</sup>

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<sup>12</sup>*Nigerian Standard*, October 8, 1976, 1.

<sup>13</sup>*Nigerian Tribune*, September 14, 1977.

In the final analysis, the Constituent Assembly 1988 was elitist. *The Nigerian Tribune* termed the result “a good mix” in which pre-independence politicians, new aspirants, former civil servants, academicians, and lawyers were well represented. Others include few doctors, engineers, journalists, economists, accountants, and teachers. *The Nigerian Tribune* lamented the omission of typical farmers, active trade unionists, and the paucity of women members.<sup>14</sup>

Table 4 indicates the membership of the CRC committee as well as their profession or occupation. A cursory glance at the table confounds any doubter as to the elitist composition of the CRC. In fact, it reads like the top “Who’s Who” in Nigeria. Their interests cannot be said to reflect the interests of the masses.

The opening address of the Head of State, Babangida, to the Constituent Assembly on May 11, 1988, contained the following statements:

As you might have noticed from the composition of this Assembly, three categories of membership have been assembled to provide the national forum for the smooth functioning of the enormous task of fashioning a constitution for ourselves. The first category consists of those of you representing Federal Constituencies nationwide. The rationale for deciding on Federal Constituencies and not State representation, as was the case ten years ago (1977 – 78, is to make the Constituent Assembly, this time around, the most truly representative of all conferences/assemblies that have ever been convened for the purpose of evolving a constitution for Nigeria in her history. Federal Constituencies (301 of them) are the closest to what can be called “grassroot” and they take into account the discernible diversities in Nigeria.<sup>15</sup>

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<sup>14</sup> Ibid.

<sup>15</sup> *Report of the Proceedings of the Constituent Assembly – 1988 - 1989*, vol 1, p. i.

TABLE 4. THE CONSTITUTION REVIEW COMMITTEE MEMBERSHIP

LIST - 1998

S/No. Name Profession/Occupation	S/No. Name Profession/Occupation
1. Ardo, Hon. Justice (Dr) Muhammadu Chief Judge - Gongola State, Chairman	20. Dari, Mrs. Zainab A., Civil Servant, Administrative Officer, Katsina State
2. Duba, Con, CFR, LLD (HON.) Inyang, Chief Etim O., NPM Retired Inspector – General of Police, Vice-Chairman	21. Aminu, Alhaji Murtala, OFR Galadima of Adamawa, Private Legal Practitioner
3. Abebe ebe, Dr. C. E. OFR Chairman, Nigerian Breweries, Limited	22. Amoda, Prof. John Moyibi Lecturer, University of Lagos
4. Abubakar Alhaji M.T Chairman, Borno State Rent Tribunal	23. Anyang, Mr. S. Inyang, Civil Servant, NYSC, President, National Honors Award
5. Abubakar, Mrs. Femi Solicitor, Niger State	24. Arikpo, Dr. Okoi, SAN Private Legal Practitioner
6. Adelowo, Dr. Femi Private Medical Practitioner	25. Asemota, Mr. Solomon A. SAN Private Legal Practitioner
7. Adi, Mr. Baba, Private Legal Practitioner	26. Audu, Alhaji Suleman, Attorney General and Commissioner of Justice, Borno State
8. Dogu, Mrs. Ada, Legal Practitioner	27. Ayua, R.I.A., Dean of Law, A.B.U. Zaria
9. Agunanne, Mr. B. C., Retired Permanent Secretary, Imo State Civil Service	28. Dalhatu, Alhaji Bashir M Private Legal Practitioner
10. Akande, Prof. (Mrs.) Jadesola, Dean of Law (LASU), Research Professor	29. Daura, Mallam Mamman Industrialist
11. Aminu, Alhaji Murtala, OFR Galadima of Adamawa, Private Legal Practitioner	30. Dari, Mrs. Zainab A., Civil Servant, Administrative Officer, Katsina State
12. Amoda, Prof. John Moyibi Lecturer, University of Lagos	31. Graham-Douglas, Mr. G. A. Private Legal Practitioner
13. Anyang, Mr. S. Inyang, Civil Servant, NYSC, President, National Honors Award	32. Ibrahim, Alhaji Abdulahi, OFR, SAN Private Legal Practitioner
14. Arikpo, Dr. Okoi, SAN, Private Legal Practitioner	33. Ijalaye, Prof. D.A., Professor of Law, Obafemi Awolowo Univ., Ile-Ife
15. Asemota, Mr. Solomon A. SAN, Private Legal Practitioner	34. Kalgo, Hon. Justice U.A. Chief Judge, Sokoto State
16. Audu, Alhaji Suleman, Attorney General and Commissioner of Justice, Borno State	35. Kazeem, Hon. Justice B.O., Retired Justice of the supreme court of Nigeria
17. Ayua, R.I.A., Dean of Law, A.B.U. Zaria	36. Kokori, Mr. Frank Ovie, General Secretary, National Union Of Petroleum and Gas Workers
18. Dalhatu, Alhaji Bashir M Private Legal Practitioner	
19. Daura, Mallam Mamman Industrialist	

Cont'd

S/No. Name Profession/Occupation	S/No. Name Profession/Occupation
37. Lawal, Dr. Hassan, Lecturer of Law, University of Jos	46. Okezie, Hon. Justice O.A. High Court Judge, Imo State
38. Mabadeje, Dr.Saida, Associate of Botany, University of Lagos	47. Onyiuke, Chief G. C. M., OFR,SAN Private Legal Practitioner
39. Mamven, Dr. J. S., Retired SMG and Head of service, Plateau State (now Private Medical Practitioner)	48. Orire, Hon. Justice Alhaji Abdulkadir Hon. Grand Khadi, Kwara State
40. Mashegu, Alhaji Abubakar Former Chairman, Niger State Civil Service Commission, General Manager, U. A. D. C. Ltd. L/Goma Shettiman, Kontagora	49. Salman, Mallam Aliyu, SAN Private Legal Practitioner
41. Mohammed, Alhaji Aliko, OFR Dan-Iya of Misau; President, Nigerian Stock Exchange	50. Soetan, Mr. Olusiji Private Legal Practitioner
42. Mohammed, Dr. Bello Haliru, General manager, Sokoto Rima River Basin Development Authority	51. Sogbesan, Mr. Yomi SAN Private Legal Practitioner
43. Mukhtar, Alhaji Abdul-Muhyi, Businessman/Industrialist	52. Toro, Mr. Emmanuel J. J. Private Legal Practitioner
44. Nwokoje, Mr. Ebele Private Legal Practitioner	53. Waziri, Alhaji Adanu A. Private Legal Practitioner
45. Obuoforibo, Mrs. Rose Lecturer in Political Science, University Of Port Harcourt	54. Yadudu, Dr. Auwalu Hamisu Head of Islamic Law, Bayero University, Kano
	55. Yahaya, Dr. Dahiru Lecturer in History, Bayero University, Kano

Source: *Report of the Constitution Review Committee (1988)*, vol II, 204 – 205

Furthermore, the Federal Military Government decided, for purposes of continuity, that some members of the CRC be made automatic members of the Constituent Assembly.

In a deliberate effort to further broaden the base of the Constituent Assembly, the government also decided to nominate some distinguished Nigerians to represent important and critical interests. Among its 102 members were 28 Doctors (academic and medical), 4 Professors, 4 Senior Advocates of Nigeria, 3 Justices of the High Court, and 3 architects. The remaining 60 members were lawyers and other graduates. For

example, the composition of the Rivers State, elected members in the Constituent Assembly included the following:

Mr. C. P. Ajuwa – Contested gubernatorial election in 1991 but failed.

He later contested the Presidential primaries of the NRC but failed after a good showing.

Mr. C. S. Awuse – Contested the gubernatorial election in 1991 under the SDP but failed

Dr. R. N. P. Nwankwoala – Contested the State Chairmanship of the NRC but failed

Dr. Peter Odili – Deputy-Governor of Rivers State 1999-2002.

Dr. Don Cookey – Business executive

Mr. G. Ellis-Dokubo – Barrister.<sup>16</sup>

### *African Dependency and Dependent Constitution*

As stated in Chapter I, from its independence in 1960, Nigeria has operated a dependency constitution. Herbert Macauley, Nnamdi Azikiwe, Obafemi Awolowo, and Ahmadu Bello – all were the personae dramatis of early Nigerian politics. They were nationalists who challenged British imperialism and led Nigeria to independence. However, in the bargain they got a Dependency Constitution that was substantially ill-suited for Nigeria's situation. Their acceptance of a British – devised constitution was a manifestation of the mental bondage to the British claim of ultimate civilization. Nigeria has for too long been fed with the ethnocentricity of western civilization, and some academics have adopted a reverse position to advocate the notion of

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<sup>16</sup>Ibid.

Afrocentricity. Britain, had in the first place founded her constitutional arrangements upon early Greek writers, although some British constitutional writers have made bold to deny the eastern connection in their constitutional development. The study will at a later point seek to go beyond the Greek sources and seek to demonstrate that, in the words of George James, “The Greeks were not the authors of Greek Philosophy, but the people of North Africa, commonly called the Egyptians.”<sup>17</sup> The point is that Nigerians should have gone back to their African roots to formulate an African-oriented constitution. They would have thrown out their Dependency Constitution in favor of a home-grown one. Western scholars want people to believe that their society was the peak of social evolution and that, insofar as other societies needed to change, the real question was how far they could become like the west.<sup>18</sup> In other words, the western scholars approach gave rise to ethnocentric values that propounded the modernization theory. Chancellor Williams asked Africans to look inwards and discover their own traditional philosophy and constitutional system:

When, if ever, black people actually organize as a race in their various population centers, they will find that the basic and guiding ideology they now seek and so much need is embedded in their own traditional philosophy and constitutional system, simply waiting to be extracted and set forth.<sup>19</sup>

Despite the claim of some western scholars that western societies were the peak of social evolution, it should be noted that the constitution of France during the Third

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<sup>17</sup>George G. M. James, *Stolen Legacy* (San Francisco, CA: Julian Richardson Association, 1988), introduction to reprint.

<sup>18</sup>Ake, *A Political Economy of Africa*, 2-4.

<sup>19</sup>Chancellor Williams, *The Destruction of Black Civilization: The Great Issues of Race from 4500 BC to 2000 AD* (Chicago: Third World Press, 1990), 161.

Republic (i.e., the constitutional laws of 1875), contained no Bill of Rights. Field remarks that no single document comprises fundamental law.<sup>20</sup> The U.S. entrenched a Bill of Rights in its constitution by way of the first ten amendments, and that was in order to facilitate the ratification of the 1787 constitution. The ratification was completed on December 15, 1791. The Bill of Rights was entrenched in African Constitutions before the advent of western civilization. It is our considered opinion that the Nigerian Constitution-makers should look inward and draw up a home-grown and enduring constitution. It would say farewell to the Dependency Constitution of the West.

### *Authentic African Constitution*

Writing on the African constitution as the birth of democracy, Williams explained that he was dealing with a people to whom white people had given the name “Negro”:

That we are here studying a single people, not peoples, is a major theory and fact of black history and one of our principal guidelines. We are, therefore, primarily concerned only with those things which were characteristically African, practically universal among them from one end of the continent to the other, and which thereby indicated an ancient common culture in a common center of Black Civilization ... on this we stand.<sup>21</sup>

The author drew attention to the rich fundamental constitutional laws that existed during Black Civilization:

1. The people are the final source of powers

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<sup>20</sup>Field, *Governments for Modern Society*, 508.

<sup>21</sup>Ibid.



2. The rights of the community of people are, if right, superior to those of any individual, including chiefs and kings: (a) The will of the people is the supreme law, (b) chiefs and kings are below the law, not above it.
3. Kings, chiefs, and elders are leaders, not rulers. They are selected representatives of the people and the instrument for exerting their will.
4. The government and the people are one and the same.
5. The family is recognized as the primary social, judicial, economic, and political unity in the society. The family council may function as a court empowered to try all internal (non-serious) matters involving any members of the extended family group.
6. The elders of each extended family group or clan are the chosen representatives on the council.
7. Decisions in the council are made by elders, the King or Chief must be silent. Even when the council's decision is announced, it is through a speaker (linguist). Decrees or laws are issued in the same manner to assure that the voice of the chief or king is the voice of the people.
8. The land belongs to no one. It is God's gift to mankind for the end of a sacred heritage, between the living and the dead, to be held in trust by each generation for the unborn who will follow, and thus to the last generation.

9. Each family, therefore, has a right to land, free of charge,  
sufficient in acreage for its economic well-being, for the right to the  
opportunity and means of making a living is the right to live.
  - a. The land, accordingly, cannot be sold or given away.
  - b. The land may be held for life and passed on to the eldest family  
head.
10. All moneys, gifts, taxes, and other forms of donations to the chief or  
king still belong to the people for relief or aid to individuals in times of  
need.
11. Judicially, the procurement involves cases that have originated from the  
chiefs court to the native court. The jury system was observed in the  
chief's court. Contrast this with modern African Constitutional Courts  
where the jury system is abandoned as a result of corruption in modern  
African society, a reflection on the colonizers' abuse of power.
12. Fines for offences against an individual go to the victim, not the court.  
This principle is now being introduced by the British judicial system:
  - a. Part of the money is given as fee to the trial court.
  - b. Part of the money received from the loser is returned to him as an  
expression of good will and desire for renewal of friendship.
13. "Royalty" in African terms means "royal worth," the highest in  
character, wisdom, sense of justice, and courage. The people, in honor of  
the founder of the nation will elect chiefs from the founder's family

(lineage) if the heirs meet the original test that reflected the founder's character, whose spirit is supposed to be inherited.

14. The trouble of one is the trouble of all. No one may go in want while others have something to give. All are brothers and sisters. Each is his brother's or sister's keeper.
15. Age grades, classes are social, economic, political, and military systems for:
  - a. Basic and advanced traditional education (formal);
  - b. Individual and group responsibility roles;
  - c. Police and military training
  - d. Division of labor
  - e. Rites of passage and social activities.

In chief-less societies, the age grades are the organs of social, economic, and political actions.

16. The community as a whole is conceived of as one party. When opposition is conducted by leaders of various factions:
  - a. Functions of opposition are usually formed by the different age groups;
  - b. Debates go on indefinitely until a consensus is reached;
  - c. Once a consensus is reached and the community's will determined, all open opposition to the common will must cease (compare with Rousseau's General will.)

- d. Those whose opposition is so serious that they are unwilling to accept the new law may “splinter off” either individually or in groups under a leader (to found a new state or the nucleus of it).

17. In warfare, the code is not to kill the enemy but to overpower him.

Where killing is unavoidable, it must be at a minimum. In case of defeat, there must be some kind of ruse or truce to enable the enemy to retire in honor.

18. The African religion, not being a creed or article of faith, but an actual way of thinking and living, is reflected in all institutions and is, therefore, of greatest constitutional significance: Politically, the role of the chief as high priest, who presents the prayers of the people to his and their ancestors in heaven, is the real source of his influence, political or otherwise.

19. The supreme command of the fighting forces is under the council, not the kings. If the king becomes the commander-in-chief, it is through election by the council because of his qualification as a general or field commander. This position ends with the war and the armed forces return to former status under the council, or more directly under the respective paramount chiefs. There were no standing armies.<sup>22</sup>

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<sup>22</sup>Ibid., 161-162.

*Fundamental Rights of the Africa People*

The following is a representative number of human rights, also drawn from customary laws or traditional constitutions. Every member of the community had the following rights:

- i. The right to equal protection of the law.
- ii. The right to a home.
- iii. The right to land sufficient to earn a livelihood for oneself and one's family.
- iv. The right to receive aid in times of trouble.
- v. The right to petition for redress of grievances.
- vi. The right to reject the community's final decision on any matter and to withdraw from the community unmolested; i.e., the right of rebellion and withdrawal. (Compare with early Greek writers.)
- vii. The right to fair trial. There must be no punishment greater than the offence or fines beyond the ability to pay. This latter is determined by income and status of the individual and his family.
- viii. The right to indemnity for injuries or loss caused by others.
- ix. The right to family or community care in case of sickness or accidents.
- x. The right to special aid from chiefs in circumstances beyond a family ability.
- xi. The right to general education covering morals and good manners, family rights and responsibilities, kinship group and social organizations,

neighborhoods and boundaries, farming and marketing, as well as family, clan, tribal/ethnic, and state histories.

- xii. The right to an inheritance as defined by custom.
- xiii. The right to protest against one's family and kinsmen even by violent means if such becomes necessary and can be justified.
- xiv. The right to the protection of moral law in respect to wife and children, a right, which not even the king, can violate.
- xv. The right of an equal share in all benefits from common community undertakings if one has contributed to the fullest extent, of one's ability, no matter who or how many were able to contribute.<sup>23</sup>

These constitutional principles and practices were held on to and carried by the migrating Blacks to every part of African continent. Even in Egypt, where the Asian and European impact was greatest, African constitutionalism could not be completely eradicated.

### *The Origin of African Democracy*

The foregoing observations suggest that the constitution of a people or nation written or unwritten, derives from its customary rules of life, and what is now called "democracy" was generally the earliest system among various people throughout the ancient world. Among the blacks, democratic institutions evolved and functioned in a socioeconomic and political system, which western writers call stateless societies or "societies without chiefs."<sup>24</sup> Where these societies were referred to as "primitive"

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<sup>23</sup>Ibid., 165-166.

<sup>24</sup>Ibid., 162.

democracies, the writers are, in fact, demonstrating a lack of understanding. Far from being just a descriptive terms for backward peoples, primitive also mean the first, the beginners. Moreover, many of these so-called stateless societies were states in fact without necessarily conforming to a predetermined western structural pattern of state. Indeed, what is called a stateless society in Africa would hardly be classified as such in the west. A state is any collection of people occupying a given territory and living under their own government independent of external control.

*The African Origins of Western Democracy*

What is called a Dependency Constitution may, after all, not have been borrowed from Europe. James challenges the western world notion about Greek philosophy, as stated above. "This theft of the African legacy by the Greek led to the erroneous world opinion that the African continent has made no contribution to civilization, and that its people are naturally backward."<sup>25</sup> For centuries, the world has been misled about the original source of the arts and sciences. For centuries, Socrates, Plato, and Aristotle have been falsely idealized as models of intellectual greatness, and for centuries the African continent has been called the Dark Continent. History portrays Greek philosophers as undesirable citizens who, throughout the period of the investigations, were victims of persecution at the hands of the Athenian government. Socrates was executed, Plato was sold into slavery, and Aristotle was indicted and

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<sup>25</sup>James, *Stolen Legacy*, 8.

exiled.<sup>26</sup> It is contended that their teachings were foreign to the Greeks, and indeed borrowed or stolen from Egyptians of North Africa.

From this survey, so far, it can safely be concluded that the Nigerians can go to their roots and fashion out a constitution that would reflect Nigeria's reality. Injunction to this end by Babangida and his former Attorney – General, Prince Ajibola, are not enough. Williams reminded his readers of the indigenous constitutions that existed before the advent of western civilization and its penetration into Africa. There is also abundant evidence that the British and U.S. constitutions which borrowed extensively from the Greeks, had been stolen or borrowed documents on philosophy and politics from the Egyptians of North Africa.

However, some western scholars would not accept that Aristotle, Montesquieu, or Locke influenced the writers of the Federalist Papers. Chancellor Williams commented on the series:

I know not ..... of any work on the principles of free government that is to be compared, in instruction and intrinsic value, to this small and unpretending volume of the Federalist, not even if we resort to Aristotle, Montesquieu or Locke.<sup>27</sup>

Eminent scholars such as Dietze and Chancellor Williams have not given due credit to the impact of Aristotle on the discussion of federal government in the U.S. Dietze argues that the two authorities that mainly influenced medieval secular thinking, Aristotle and Corpus Juris Civilis, did not furnish theories that would have encouraged discussions of federalism in the Middle Ages. "Existing institutions were not of the kind

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<sup>26</sup>Williams, *The Destruction of Black Civilization*, o160.

<sup>27</sup>Montesquieu, *The Spirit of the Laws* (New York: Hafner, 1949), Vol.. 1, 149 – 60.



to bring about a consciousness of federal government and to substitute a scholarly elaboration of that subject.”<sup>28</sup> Kent puts the instructive and intrinsic value of the Federalist above whatever Aristotle, Montesquieu, or Locke can offer.

James rejects Socrates, Plato, and Aristotle as the authors of “Greek philosophies,” but argues that the authors were Egyptian priests and hierophants. He points out that the Greek philosophers were undesirable citizens who were victims of relentless persecution at the hands of the Athenian government. Socrates, Plato, and Aristotle were brutally rejected, and Pythagoras was expelled from Broton in Italy. He could not imagine the Greeks making such an about turn as to claim the very teachings which they had persecuted and rejected. He concluded that, “The Greeks were not the ‘authors’ of Greek philosophy but the Egyptian priests.”<sup>29</sup>

### *Summary*

The 1988 and 1994 – 95 Constituent Assemblies failed to deliver dividends of democracy. They were tele-guided by President Babangida and Abacha in their deliberations. They yielded to governmental pressures and did nothing to challenge the no-go-areas. The Dependency Constitution fashioned after the colonial era remained with Nigerian constitution makers. These Assemblies failed to appreciate the contribution of Africa in giving the fundamentals of the constitutional order to the world. Our constitutions instead of being home-grown were western importations. After all Williams as noted earlier, reminded his reader of the indigenous constitutions that

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<sup>28</sup>Gottfried Dietze, *The Federalist: A Classic on Federalism and Free Government* (Baltimore, MD: Johns Hopkins Press, 1961), 297.

<sup>29</sup>James, *Stolen Legacy*, 8.

existed before the advent of western civilization and its penetration into African.

Our constitution makers should look inward.

The next chapter reports on the responses of Nigerian citizens to the research questionnaire.

## CHAPTER VIII

### SURVEY QUESTIONS AND FINDINGS

In this study an attempt has been made to establish the impact of the Constituent Assemblies of 1978, 1988 and 1994 on Nigeria's political evolution. The constant review of the Nigerian Constitution has been blamed on the political elites that crafted our constitution. The military and constitution operators were not spared from blame. The disagreement among members of the Constituent Assembly over socio-political issues is also fingered and blamed.

Members of the Constituent Assemblies see themselves as representative of diverse religions, ethnic and ideological leanings. The Sharia controversy is a case in point. It may be argued that the most critical factor responsible for the constant review of Nigeria's constitution since independence is the military overthrow of governments and suspension of the constitutions. Research findings, however, show that the military coup syndrome cannot be separated from the recklessness of politicians who violate the constitutions and ruin the economy. It is argued that a country may have a high level of political development with a well intentioned constitution, yet politicians will ignore or violate the constitution in pursuit of their selfish interests. As such, it can be argued that the constitution makers, constitution operators and the military are collectively responsible for the constant review of Nigeria's constitutions.

*Survey Design and Respondents*

The questionnaire was distributed in cities representing the three regions of Nigeria: North, East and West. The city of Port Harcourt in Rivers State (a minority state) was also included. The cities were Kano, representing the Northern region, Lagos, representing the Western region, Enugu, representing Eastern Nigeria. The questionnaire was designed to ascertain the impact of the Constituent Assemblies (1978, 1988 and 1994) on the Nigerian constitution and political evolution. It was also designed to focus on the need for Constituent Assemblies for the future. About 800 questionnaires were distributed to former members of the three Constituent Assemblies, professionals such as doctors, lawyers, politicians, and religious leaders, the military, traditional rulers, as well as market women and students of higher institutions. The questionnaires were also distributed among the rural populace in selected local government areas of Rivers State. The percentage of respondents who returned the questionnaire was 56 percent. The questionnaires were sent out based on the 1991 Nigerian population figure of 88.5 million.<sup>1</sup>

The demographics of the respondents included age, sex, education, ethnic affiliation, occupation, and religion.

1. Age: The respondents ages were divided into three categories: 30 percent were between 18 – 29 years, 55 percent, 30 – 40 years, and 15 percent over 40 years. The age distribution shows that the majority of the respondents were from the political active age 30 – 40 years.

Are youths, our future leaders', active participants in Nigerian political process?

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<sup>1</sup>The 1991 Population = 88,514,501. This figure was used to calculate the percent of the questionnaires projected.

- a. Yes 30%
- b. No 65%
- c. Do not know 5%

2. Sex: As might be expected, there were more male than female respondents. This demonstrates the lack of interest on the part of women in Nigeria's politics. The lack of interest on the part of women seems to stem from what they call male oppression. They claim they are marginalized.

Are women who constitute 50% of Nigeria's population equitably represented in Nigerian political system?

- a. Yes 20%
- b. No 70%
- c. Do not know 10%

3. Education: There is a high degree of illiteracy in Nigeria. However, most of the respondents (55 percent) had some sort of high school and college education. They were enlightened enough to participate actively in the Nigerian political process.
4. Ethnic Affiliation: Inasmuch as we tried to reach the major ethnic groups, the respondents from the minorities comprised 35% of the respondents, while the Hausas, Yorubas, and Ibos comprised 20%, 23% and 22% respectively. The minorities' problems have not been adequately addressed in Nigeria. They show a high degree of interest in national issues. The Nigeria economy thrives on the export of petroleum. The minority areas account for 85% of oil supplies.

5. Occupation: In Nigeria, the government is the biggest single employer.

The largest percentage of respondents came from civil servants and public servants, all employees of the government. They accounted for 50 percent. Other categories of occupation in Nigeria were artisans, farmers, market women, home-makers, and accounted for 32 percent. Professionals such as doctors, lawyers, and accountants registered 10 percent, and the remaining 8 percent accounted for laborers.

6. Religion: There have been no reliable statistics on the percentage of religious groups in Nigeria. Despite all attempts to strike a balance on religious leanings, 65 percent turned out to be Christians, 35 percent Moslems, and 5 percent others. These figures do not reflect the percentage of Moslems and Christians in Nigeria. The 1991 census forms made no provision for ethnicity and religion in the data.

7. Party Affiliation: 60% of the respondents were members of the SDP, 30% belonged to the NRC, and 7% having no party affiliations. (These were the only parties allowed to operate by the Babangida administration of the time.)

#### *Analysis of Survey Responses: The Political Process*

This section was devoted to the forms of democratic political process Nigerians could select. The issue of political party was of major concern to Nigerians. The imposition of two political parties was another major issue Nigerians considered. Others included forms of representation in government. Nigerians expressed their preference on military or civil rule.

*Party System*

8. List in order of priority, the party system Nigeria should adopt:

- |                |     |
|----------------|-----|
| a. Zero Party  | 4%  |
| b. One Party   | 15% |
| c. Two Parties | 24% |
| d. Multi-Party | 56% |
| e. Others      | 1%  |

Opinion was widely divided on the number of parties appropriate for the Nigerian situation. Some held the view that the two-party political structure setup by Babangida's administration should be retained. A large majority of questionnaires returned favored the adoption of a multi-party system but with an upper limit of five parties. This group was averse to party formed and or funded by government whether military or civilian. A minority of opinion advocated an indigenous non-party system. This group talked about consensus as the traditional way of solving social, political and legal matters. They cited the traditional jury system operated by consensus. One party system had a tiny following. This group cited examples of some East African countries that successfully practiced this system. A two party system not established by government had a good percentage of adherents with the provision that this system should be allowed to evolve by itself. These opposed the claim that the three big ethnic groups would dominate and marginalize other ethnic groups. In all cases of two or multi-party arrangement carpet crossing was focused upon. "Any member of a political party elected should resign before declaring for any other party" they say.

*Military Regime*

9. What form of government do you prefer, military or civilian?

- |                |     |
|----------------|-----|
| a. Military    | 1%  |
| b. Civilian    | 98% |
| c. Do not Know | 1%  |

There was a near unanimous view that the military is an aberration in a democratic institution. Coups, they say, are manifestations of selfish ambitions of military officers who see their role as a short cut to prosperity. Some call for constitutional safeguards to stop military coup d'état. This group is probably not aware of the provision in the 1979 and 1989 constitution, which stated in identical terms. Section 1(2). The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of this constitution.<sup>2</sup> The sanction against the military is probably the greatest concern among Nigerians. Some respondents went as far as advocating bilateral treaty with some Western nations to act as deterrent to further military incursion on our political life. The 98% score against military intervention on our politics speaks the mind of Nigerians.

*Creation of New States and Local Government*

10. Should new state be created?

- |           |     |
|-----------|-----|
| a. Yes    | 90% |
| b. No     | 10% |
| c. Others | 0%  |

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<sup>2</sup>Article 1, 1979 Constitution



## 11. Should more local government areas be created?

- |           |     |
|-----------|-----|
| a. Yes    | 95% |
| b. No     | 5%  |
| c. Others | 0%  |

## 12. Do you feel the positive effect of local government?

- |        |     |
|--------|-----|
| a. Yes | 30% |
| b. No  | 70% |

The respondents in the rural areas scored high on this question (see responses from local government rural areas). Only 10% of respondents to our questionnaires called for a stop to state creation. This group holds the view that state creation is wasteful and breeds one city state. Some members of this group advocate the abolition of the present states structure because most of the states are unviable. The other 90% favor the creation of more states. This group argues that minority ethnic group will be saved from domination by the Hausa /Fulani, Ibo and Yoruba ethnic nationalities. The danger however is there could be as many states as there are ethnic nationalities in Nigeria if all requests are granted. Some states are described as glorified local government areas.

The agitation for local government creation is rife in Nigeria, with about 95% of those interviewed calling for such creation. Local government is the tier of government nearest to the people as well as a center for development. Presented with a choice between state and local government creation the later was preferred. There was however dissatisfaction with the performance of local government councils. But this was as a result of poor management by council personnel. The winner– takes-all syndrome at the federal and state levels was even intense at the local government level. This poor

performance rather than deter agitation gave rise to more demands as each clan unit if not family expresses desire for “its own local government.”

The practice under Babangida administration whereby the Local Government relates to the central government directly without passing through the State Government was deplored. This relationship brought to focus the question of what are the federating units in Nigeria? Is it the states or the local government or both? This question is answered elsewhere in this work.

### *Structure of the Nation*

13. What structure do you support in Nigeria?

- |               |     |
|---------------|-----|
| a. Federal    | 75% |
| b. Confederal | 25% |
| c. Unitary    | 0%  |

The overwhelming majority of Nigerians believe in and advocate the continued indivisibility of the Nigerian nation. References were made to the Nigerian civil war (1967 –1970) as a high price for attempted secession and break-up of the nation. They emphasize that a pluralistic and culturally complex country like Nigeria is most suited for a federal form of government. They caution that there is the need to reduce government power at the center by reducing federal responsibilities and transferring some to the states. The states that are not viable should be merged. On the other hand advocates of a confederal structure argue that federalism has failed to cater for Nigeria. Federal structures, they say failed to cater for Nigeria’s geo-political and socio-cultural diversities. They call for six regional arrangements to form the confederation. These units are the:

- i. Northeastern

- ii. Northwestern
- iii. Northcentral
- iv. Southeastern
- v. Southwestern
- vi. Southsouth or southern minorities

We wish to observe that the Regional arrangement will not have the support of particularly minority states that have embraced the proliferation of states as an escape from domination of the major ethnic groups that dominated the four regional Nigeria from 1960 to 1967 when states were first created in Nigeria. The federal structure was therefore adopted by 75% of our respondents.

General Sani Abacha modified the six regional arrangements, not for the purpose of confederal arrangement but as a way of bringing many groups together as building blocks to attain fiscal federalism. In his address while inaugurating the National Constitutional Conference on June 27, 1994 he declared:

The democratic nation we are building will be best sustained by co-ordinative rather than sub-ordinative relationship with proper sympathy for equal claims to political power, legitimacy and social justice.<sup>3</sup>  
General Abacha therefore created the six zones so that power could rotate

among the zones, such that no one group will cling to power at the expense of the others. The zones created by Abacha are as follows;

- 1. The South East
- 2. The North East
- 3. North Central
- 4. North West

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<sup>3</sup> *Report of the Constitutional Conference 1994/1995*, Vol. II, p 8.

5. South West

6. South South

It must be noted that the above six geo-political zones are not federating units. Rather they are the geo-regional units that are comprised of the 36 states.

### *Form of Government*

14. What form of government do you recommend for Nigeria?

a. Presidential system	–	95%
b. Parliamentary	–	3%
c. Diarchy	–	1%
d. Triarchy	–	1%
e. Others	–	0%

There was near unanimous acceptance of the presidential system, scoring 95% over parliamentary system with 3%. Nigeria operated the parliamentary system from independence in 1960, to the Republican Constitution of 1963, that was overthrown by the first Nigerian coup d'état, in 1966.

The Constitution Drafting Committee (CDC) of 1976 recommended a presidential system of government fashioned after the United States type. Nigerians practiced this system until December 31, 1983. The Constituent Assembly of 1978 adopted the recommendation of the CDC and gave Nigeria a presidential form of government. Nigerians have experimented with the two contended options, albeit for a relatively short period, but they are overwhelmingly in support of the presidential system.

Diarchy was heavily rejected with a rating of 1% (one percent). Those in support of diarchy argue that Nigeria has practiced this option for over twenty-one of its (then) thirty three years as an independent nation. The Nigerian political class are eager to serve under the military any time they seize power.

The bane of Nigerian's political as well as social problems has, however, been identified as the military. Nigeria's poor image internationally has also been placed at the door step of the military. Triarchy that brings in traditional rulers has the support of a vociferous 1%. They extol the virtues of traditional rulers; and these include:

- (i) Their leadership is accepted and easily monitored.
- (ii) Before the advent of Europeans political leadership was centered on them.
- (iii) In northern Nigeria they were religious, political and economic leaders.
- (iv) They are respected by the people, because they are not just politicians.

The above qualifications notwithstanding the majority of respondents were not persuaded.

### *Special Issues in Nigerian Politics*

The respondents were required to list special issues that constitute a problem for the political advancement and constitutional evolution of the country. There was absolute agreement on the part of the respondents that the military factor in Nigeria politics was the greatest problem. It is interesting that the minority problem should rank third. This may be because of the active participation of minority respondents in returning the questionnaires. Again, the minority claim to be economically disadvantaged, although they produce the bulk of the national wealth. Their interest in

readjustment of principles of revenue allocation brought up the problem of revenue to the fourth position. Most states demand more revenue to the states as against the 55 percent share to the Federal Government (see Chapter V, list of the distributions from the Federal Account).

15. What are the special issues that militate against the political advancement and constitutional evolution of Nigeria?

- |  |     |
|--|-----|
| a. The state of Nigeria economy            | 17% |
| b. Lack of leadership                      | 17% |
| c. Military intervention in politics       | 26% |
| d. Ethnic involvement in Nigeria politics. | 14% |
| e. Minority problem                        | 14% |
| f. Revenue allocation                      | 10% |
| g. Others                                  | 2%  |

16. Through what means should Nigeria adopt a constitution?

- |   |     |
|---|-----|
| a. By military appointing a Constituent Assembly                          | 5%  |
| b. By adopting the 1979 or 1989 constitution:                             |     |
| 1979 constitution   | 20% |
| 1989 constitution   | 1%  |
| c. By constitution drafted by elected Nigerians and ratified by Nigerians | 74% |

The state of the Nigerian economy topped the list of concerns by respondents. Revenue generation was ironically not of primary concern to our respondents. They were more concerned with revenue allocation. In the word of Harold Lasswell: “who gets what, when, how.” This is the credo for Nigerians. Revenue allocation, therefore, is

the most sensitive aspect of fiscal federalism in Nigeria. Some argue that strategic minerals like petroleum and gas should belong to the states from where they are derived and the y in turn should pay tax, royalty or duty to the central government. Others argue that a percentage of earnings from mineral producing areas should be paid to the areas. Suggestions range from 50% (for which there is precedent in revenue allocation in Nigeria) to 5% to be paid to the areas as adequate compensation for environmental ecological degradation.

Lack of leadership was blamed for our lack of political development. The political class, as well as the military class, was blamed for our woes. Our respondents failed to apportion significant blame on the followership. This is unfortunate because examples abound in the world where civilians have by demonstrations toppled governments, even military.

Military intervention in politics was described as an aberration on our constitutional development and democratization efforts. Our respondents were quick to point out that our economy was destroyed by the military with inflation running up to a thousand percent. The devaluation of our currency (which is not even legal tender internationally) was harped upon. The military operate a unitary form of government in a federal setup. The first act of any military government in the country has been to suspend our constitution with our rights left to the whims and caprices of the military.

Ethnic involvement in Nigerian politics was identified as the bane of our federal arrangement. Some of our respondents argue that ethnic nationality claim is not necessarily detrimental to the process of nation building. They posit that other nations of the world have ethnic mix but use it positively for the purposes of national

consciousness. The Welsh, Scottish, Irish and English owe their primary struggle to Great Britain. The Irish struggle against Britain was noted as a cause that should be addressed by those in power at Westminster. American division on color lines was also recounted. But they argue that conscious efforts, including constitutional amendments, were aimed at solving and not perpetuating the problem.

Respondents argued that the major ethnic groups do not relent in their marginalization of minority ethnic groups. Politicians have relied mainly on ethnic loyalties in the formation of political parties priorities. These parties correspond to Hausa/Fulanis, Yoruba, Ibo. This scenario was dislocated by General Babangida's two-party system imposed on the people of Nigeria. The arrangement did not stand the test of time as his political parties were labeled "parastatals." Power sharing has followed ethnic interest with the major groups monopolizing the political and economic benefits of our nation. The ethnic problem of Nigeria breeds minority disaffection in the country which manifested itself in creation of states. No southern minority person has ever held top executive position at the federal level (see table 6). Corruption and lack of accountability are blamed on ethnic cover-ups and favoritism for kith and kin. Minority status is also blamed on ethnic loyalties.

### *Religion and Politics*

Religious intolerance has led to riots in Kano involving Christians and Moslems. The clashes for which a Military Governor Zamani Lekwot was sentenced to long term imprisonment, has religious overtone about it. Government has been called upon to disengage itself from sponsoring religion pilgrimages be it for Moslems to Saudi Arabia or Christians to the Holy City. Some respondents call for the entrenchment in the next



constitution of these resolutions. The convention that if a Moslem is the President his Vice President should be a Christian ought to be entrenched in the constitution and made justicable. In April, 1989 the Christian Association of Nigeria (CAN) went to court to challenge the Promulgation of the Nigeria Pilgrims Commission Decree, which gave the Commission the responsibility for the welfare of Moslem pilgrims on pilgrimage to Saudi Arabia. CAN argued that the Decree ran counter to the secular status of Nigeria as enshrined in the 1979 constitution. CAN lost the case because the Decree ousted the jurisdiction of the court to entertain the matter.

Nigerians are overwhelmingly in support of a constitution drafted by elected Nigerians and ratified by them. They object to further military command constitutions that were the outcome of the 1978 and 1988 Constituent Assemblies. They maintain that the appointment of the next Constituent Assembly should be by due democratic process. There should be no nominated members unless for representation of special groups like trade unions and student bodies.

The preamble to Nigeria's constitution since 1979 has lied about the document itself. They are in no wise documents by Nigerians for Nigerians; rather they are constitution by military command imposed on Nigerians.

#### *Political Marginalization*

17. In your opinion, are you marginalized in the political process of Nigeria?

- |                |     |
|----------------|-----|
| a. Yes         | 60% |
| b. No          | 35% |
| c. Do not know | 5%  |

On the question of marginalization, the minority respondents see themselves as marginalized. They argue that the provisions in the Constitution that would have given them protection are not justiciable. They refer to Chapter II in both the 1979 and 1989 constitutions which deal with Fundamental Objectives and Directives Principles of State Policy. It is under this chapter that we have the federal character principle.

Section 14 (3) says:

The composition of the government of the federation or any of the agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in the government or any of the agencies.<sup>4</sup>

The responses to question 16 are most interesting. Because of the enormous costs in terms of manpower and materials, the researcher surmised that Nigerians should be spared the ordeal of another Constituent Assembly. However, through research and findings, it became apparent that, costs notwithstanding, the popular sentiment is that the military should set in motion another Constituent Assembly composed of civilian elected members to draft a new constitution for Nigeria.

### *Restructuring of the Polity*

States or local government units or combination of ethnic grouping?

18. What federating units do you recommend for Nigeria?

- |                           |     |
|---------------------------|-----|
| a. State                  | 30% |
| b. Local Government Units | 30% |

---

<sup>4</sup>The same provision is repeated in section 14 (3) of the 1989 Constitution.

- |                     |     |
|---------------------|-----|
| c. Ethnic Groupings | 35% |
| d. Others           | 5%  |

19. Corruption in Nigeria is blamed on the:

- |                    |     |
|--------------------|-----|
| a. Political Class | 55% |
| b. Military Class  | 40% |
| c. The Masses      | 5%  |

20. Poverty may be blamed on

- |   |     |
|---|-----|
| a. Laziness of the masses   | 5%  |
| b. Plundering of the economy by<br>politicians elected or appointed | 70% |
| c. Lack of employment and empowerment<br>of the masses              | 20% |
| d. Other  | 5%  |

*The Judiciary*

The judiciary threw itself open to executive manipulation during the events preceding and following the June 12, 1993, general elections in Nigeria. There was a spate of decisions that threw the sacred doctrine of precedents to the dogs. If one names the judge handling matters involving the June 12 elections, Nigerians, will state the verdict to be expected from that court. The courts, the last hope of the ordinary man, were drawn into the political arena. Some of the courts exhibited ethnic biases. The executive voice could be heard delivering judgment in some of the high courts. The respondents' answers are listed below:

21. Is the Judiciary independent?

- |        |     |
|--------|-----|
| a. Yes | 65% |
|--------|-----|

- b. No 30%
- c. Do not know 5%

A judicial system where 35% of the respondents say the judiciary is not independent has compromised the freedom of the common man. The watchdogs' role of the judiciary is being questioned. An eminent jurist, and retired judge, Akinola Aguda, speaking on the rule of law in Nigeria and the factors that have more or less made the judiciary less potent, echoed similar sentiments.

On habeas corpus Aguda said a situation whereby an application is allowed to last up to four or more weeks in court while the applicant remains in detention is despicable. We said: "any judicial system which permits this is a bankrupt system, and this is what one sees around in the country in the past few years."<sup>5</sup> Furthermore, Aguda lamented the fact that there was not enough constitutional guarantee left for the protection of human rights in view of the many decrees that have ousted the jurisdiction of the judiciary. He further stated: "the little protection left is at the mercy of the people who are ruling."<sup>6</sup> That is of course the military.

## 22. Does the executive interfere in the work of the judiciary?

A significant 38% answered yes:

To extend the survey questions and research findings to rural areas of Nigeria where at least 65% of the population live two local government areas in the Rivers State of Nigeria were surveyed as a case study. For practicality Etche Local Government Area in the mainland area and Buguma Local Government Area in the Riverine area –

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<sup>5</sup>*Newswatch*, January 29, 1990, 10.

<sup>6</sup>*Ibid.*

all of Rivers State, were chosen. The literacy level in these two areas is 30 and 60 percent respectively. These areas are focused on because they reflect the average rural areas in the State. There are no good roads, no potable water, nor electricity. Yet these are basic necessities of life. Occupation in these rural areas is farming in Etche and fishing in Buguma. Poverty prevails in the areas. Primary and Secondary Schools are poorly equipped. Universities are absent from the environment. It is with this scenario that we went ahead and interviewed our respondents. For the purpose of comparison we sent similar questions to the rural dwellers. The respondents from the rural areas live in a different world from their urban counterparts in terms of political awareness.

### *The Rural Respondents*

1. Are youths, our future leaders', active participants in Nigerian political process?

- |    |             |     |
|----|-------------|-----|
| a. | Yes         | 8%  |
| b. | No          | 5%  |
| c. | Do not know | 87% |

2. Are women with a population of 50% equitably represented in Nigerian political system?

- |    |             |     |
|----|-------------|-----|
| a. | Yes         | 10% |
| b. | No          | 15% |
| c. | Do not know | 75% |

3. Party System

List in order of priority, the party system Nigeria should adopt:

- |    |            |    |
|----|------------|----|
| f. | Zero Party | 5% |
| g. | One Party  | 5% |

- h. Two Parties 5%
- i. Multi Parties 10%
- j. Do not know 75%

4. What form of government do you prefer, military or civilian?

- d. Military 3%
- e. Civilian 95%
- f. Do not Know 2%

5. Should new states be created?

- (a) Yes 95%
- (b) No 2%
- (c) Others 3%

6. Should more local government areas be created?

- (a) Yes 98%
- (b) No 1%
- (c) Others 1%

7. Do you feel the effect of local government?

- (a) Yes 75%
- (b) No 25%

8. What structure do you support in Nigeria?

- (a) Federal 5%
- (b) Confederal 5%
- (c) Unitary 4%
- (d) Do not know 86%

9. What form of government do you recommend for Nigeria?

- a. Presidential system – 6%
- b. Parliamentary – 5%
- c. Diarchy – 1%
- d. Triarchy – 1%
- e. Do not know – 87%

10. What are the special issues that militate against the political advancement and constitutional evolution of Nigeria?

- a. The state of Nigeria economy 2%
- b. Lack of leadership 3%
- c. Military intervention in politics 5%
- d. Ethnic involvement in Nigeria politics. 22%
- e. Minority problem 28%
- f. Revenue allocation 20%
- g. Government religious politics 10%
- h. Do not know 10%

11. Through what means should Nigeria adopt a constitution?

- a. By military appointing a Constituent Assembly 2%
- b. By adopting the 1979, 1989 or 1995 constitution:
  - 1979 constitution 2%
  - 1989 constitution 2%
  - 1995 Constitution 3%
- c. i. By a constitution drafted by elected Nigerians and ratified by Nigerians 23%

ii. Do not know 68%

12. In your opinion, are you marginalized in the political process of Nigeria?

- a. Yes 83%
- b. No 3%
- c. Do not know 14%

*States or Local Government Units or Combination of Ethnic Groupings*

13. What federating units do you recommend for Nigeria?

- a. State 4%
- b. Local Government Units 45%
- c. Ethnic Groupings 50%
- d. Others 1%

14. Corruption in Nigeria is blamed on the:

- a. Political Class 45%
- b. Military Class 50%
- c. Others 5%

15. Is the Judiciary independent?

- a. Yes 6%
- b. No 5%
- c. Do not know 89%

16. Poverty may be blamed on

- a. Laziness of the masses 2%
- b. Plundering of the economy by politicians elected or appointed 70%
- c. Lack of employment and



empowerment of the masses	25%
d. Do not know	3%

### *Summary*

Nigerians have spoken as is evident in this chapter. They have responded on critical issues of Ethnicity, Religion, and Party System. They have shown their preference for civilian government. They regard military interference in our polity as an aberration in our political development. Local government system is dear to the hearts of Nigerians. Every family group you may say asks for its own Local Government Area. There are 774 Local Government Areas in Nigeria. The demand for more States and Local Government Areas has not abated. In 1970 there were ten States. In 1995 the figure jumped to thirty-six (36) and Abuja the Capital Territory. Nigeria has re-arranged the geo-political zones to six. The question that exercises one's mind now is should the federating units be States, geo-political zones or local government units? In the next Chapter, we shall evaluate the foregoing findings.

## CHAPTER IX

### EVALUATION OF THE FINDINGS

The findings in Chapter VIII indicate the preference of diverse groups – the elites, religious adherents, city/urban dwellers, rural dwellers, politicians. The elite group dwells on issues of individual independence from the executive arm of government, federal structure and federal principle. Revenue allocation and Resource Control is high on the hierarchy of preference for respondents from mineral producing geo-political zones. Ethnicity cuts across the interest of elites and rural dwellers. For the politicians ethnicity afforded them the platform for political power. The rural people found ethnicity a notion to cling to.

Party politics meant much to the politicians, while the rural community simply took orders from politicians during elections. Federal principle did not positively impact on the lives of the rural people. They were more interested in the Local Government level of administration. They felt the impact of that level of government. Federal character and its benefits never went down to the rural areas. Rather politicians monopolized positions and other benefits for their supporters who live in the urban areas.

The issues of religion and no-go-areas exercised the minds of political elites and the rural communities for different reasons. The politicians use them to divide and rule the polity. Religion is an issue very close to the hearts of the rural communities. Party options whether two, one or zero party will be considered below as the evaluation and findings unfold.

### *Elitism and Constitutional Policies*

This study has established beyond reasonable doubt that the composition of Constituent Assemblies 1978, 1988 and 1994 were rather elitist, see Table 4 above. The masses were not represented. This leads to demands for yet another constitutional review.

### *Constitutional Dependency*

Much effort has been devoted to developing the notion of dependency constitutions. Our position remains that to be like the west is a demonstration of mental bondage. As James put it, “Mental bondage is invisible violence.”<sup>1</sup> Williams put it even more succinctly: “If ever black people actually organize as a race in their various population centers, they will find that the basic and guiding ideology they now seek is embedded in their own traditional philosophy and constitutional system”<sup>2</sup>

### *Special Political Issues: Minority Issues and Revenue Allocation*

The ethnic composition of the country has exacerbated disunity in Nigeria. The minority groups are worse off when it comes to sharing the national cake. Ironically, minorities are endowed with mineral oil and palm oil. The mineral oil from these areas accounts for over 80 percent of Nigeria’s export earnings, but these minority people remain the poorest in the nation. If the state of Texas, for example, were denied the benefits of oil produced in the state, would the “center” hold? These are real questions that should be addressed by Nigerian leaders.

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<sup>1</sup>James, *Stolen Legacy*, introduction to reprint.

<sup>2</sup>Williams, *The Destruction of Black Civilization*, 161.

Nigerians are calling for the swift democratization of its institutions. They are calling for constitution fashioned by Nigerians for Nigerians to be operated by Nigerians under a democratic setting. The courts, the last hope of the common man, should resist any assault by the executive, be it civilian or military.

*Constitutional Deliberations and “No-Go-Areas”*

At the inaugural meeting of the Constitution Drafting Committee (CDC) on October 8, 1975 General Murtala Mohammed gave general guidelines from where the CDC proceeded to produce the document from which the Constituent Assembly (1978) fashioned out the 1979 constitution. General Olusegun Obasanjo, under whose regime the constitution was evolved, commented:

While the 1979 constitution was standard enough, we felt some major areas where we differed must be left intact in order to ensure that the constitution was the popular will of the Constituent Assembly. These areas . . . were the number of political parties, the terms of office for the rulers . . . The bitter experience of the second republic has reinforced my conviction on some of these positions that I held then.<sup>3</sup>

Obasanjo's regrets notwithstanding, we are somewhat gratified that the 1979 constitution was not imposed on the nation by the military. But for the elitist composition of the CDC and the Constituent Assembly, it could easily pass as the constitution of the people by the people. General Olusegun Obasanjo however appointed a Constitution Review Committee (CRC) that reviewed the 1976 constitution. Thereafter, he appointed the Constituent Assembly of 1978 that used the Draft Reviewed Constitution to fashion out the 1979 constitution. Babangida, in a regrettable departure from the precedent set by Obasanjo, modified the constitution drafted by the

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<sup>3</sup>Olusegun Obasanjo, *Constitution for National Integration and Development* (Lagos, Nigeria: Friends Foundation Publishers, Ltd., 1989), 2.

Constituent Assembly before ratification by his Armed Forces Ruling Council (AFRC). Equally regrettable is Babangida's injunction that the Constituent Assembly should not deliberate on core issues now known as Babangida's no-go areas. These issues have been discussed earlier in this work. The most crippling to Nigeria's political evolution is the two-party structure (the National Republican Convention (NRC) and the Social Democratic Party (SDP)) that Babangida imposed on the country. These two parties have been derided as Babangida's brain child in which "all are joiners" with no founders. These political "monsters" militated against his much-avowed transition program. Nigeria from August 1992 to June 1993 was not able to conduct a free, fair and acceptable presidential election.

Nigerians must recall that when Babangida's Constituent Assembly boldly attempted to deliberate on the Sharia Court – a subject in the no-go areas, Babangida descended on the Assembly and warned:

- (i) You will recall that the decree establishing the Constituent Assembly gave you the specific responsibility to deliberate on the report of the Constitution Review Committee and make recommendations to the Armed Forces Ruling Council.
- (ii) As far as this administration is concerned your sacred responsibilities on these agreed issues (i.e., no-go areas) do not involve altering, without just and reasonable cause, fundamental principles and structures of the 1979 constitution as reviewed by the Constitution Review Committee.
- (iii) If you had followed these fundamental guiding principles, you would have avoided the present impasse on Sharia and customary courts and thereby spared the nation the anxiety which now prevails.
- (iv) Government has therefore decided that it is in the national interest and indeed in the interest of the assembly itself, to exclude clauses 6 (2) to 6 (6d) and 248 to 263 both inclusive of the reviewed constitution from your jurisdiction.
- (v) As far as we are concerned there exists a wide measure of national consensus on these issues. This will be reflected in the final constitution to be promulgated by the Armed Forces Ruling Council after due consideration of

your recommendations on the remaining clauses of the reviewed constitution.<sup>4</sup>

The veiled and open threats to the Constituent Assembly did not provide a favorable atmosphere for fashioning a constitution for the people. The phrase – “it is in the national interest and indeed in the interest of the Assembly itself” speaks volumes in the minds of members of the Constituent Assembly – coming from the mouths of a military leader of the country. Members feared the arbitrary use of power by Babangida.

This work had earlier focused on the excluded clauses and demonstrated that the military administration did not fully grasp the wider implications of the excluded clauses. The Constituent Assembly decided to exclude all areas that touch and concern the excluded clauses as identified by Babangida. What started off as few clauses widened in scope from seventeen (17) clauses to forty-one (41) clauses. Put differently, the core issues for deliberation by the 1988 Constituent Assembly were outside the purview of the Assembly itself.

### *Constitutional Ratification*

The question of ratification is a “sine qua non” of constitution making. Here again Babangida and his Armed Forces Ruling Council (AFRC) assumed full responsibility for ratification. He said the AFRC would promulgate the final constitution after due consideration of the Constituent Assembly’s recommendations.

By contrast the earlier Obasanjo administration had allowed the Constituent Assembly the final say on ratifications. Rotimi Williams (SAN), Chairman of the Constitution Drafting Committee declared:

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<sup>4</sup> Ibrahim Babangida, *Address to Constituent Assembly*. Lagos: Government Printing Office, 1987.

The decision of the Constituent Assembly (CA) on the Draft Constitution possesses legitimacy superior to any decree that may be enacted by any other authority. As such it is not necessary for the Federal Military Government (FMG) to enact any decree before the decisions of the CA could become the superior law of the land – the constitution.<sup>5</sup>

Rotimi Williams expressed the foregoing views while he was moving the second reading of the bill for an Act to make provision for the Constitution of the Federal Republic of Nigeria 1979.

It can be claimed without fear of contradiction that the 1978 Constituent Assembly fashioned a constitution that is for the people unlike that of the 1988 Constituent Assembly. The constitution of 1979 was to a large extent a constitution of the people for the people and by the people; while that of 1989 was to a lesser extent of the people, for the people but by the military.

### *Sharia*

Some of the major issues tackled by the 1978 Constituent Assembly were the executive presidency, revenue allocation, the ideological question of the type of economy and the judiciary, particularly Sharia Court. The Chairman of CDC, Rotimi Williams had stated with reference to Sharia that a very simple and straight forward problem has been converted by extremists on all sides into an explosive and seemingly intractable issue. He argued that, as a matter of fact the Sharia was already a reality which had a force of law in some States in the country. He opined that all the Draft Constitution did was to make sure that the operation of the Sharia in any state in the country conformed to the standards prescribed by the Constitution. He concluded: “There were bound to be conflicting interpretations of the Sharia within the States and

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<sup>5</sup>Quoted in Mohammed Haruna, *New Nigerian*, November 2, 1977, 19.

common sense therefore dictated that there should be a Supervisory institution to resolve such contradictions.”<sup>6</sup>

It is refreshing to note that the Constituent Assembly 1978 was not impressed by Williams argument and expunged the Federal Sharia Court of Appeal from the 1979 constitution. The Sharia was to generate more heat than reason when the 1988 Constituent Assembly attempted to discuss it, much against the embargo placed on that issue by Babangida himself. The swift and stern reaction of Babangida contrasted with the docility of that Assembly. Babangida as we noted above warned that Sharia was in the no-go areas where the Constituent Assembly should fear to tread. In a subdued reaction to Babangida’s warning, the Chairman of the Constituent Assembly, A. N. Aniagolu, retired Justice of the Supreme Court, replied on behalf of the Assembly:

The members of this Assembly have taken note of jurisdictions and the person who is a recipient of jurisdiction cannot be greater than the donor of the jurisdiction.<sup>7</sup>

Sharia and religion in general, contrary to Rotimi Williams’ rationalization, currently remain very divisive in Nigeria.

### *Federal Structure*

New states and boundary adjustments have generated acrimony and threatened the very foundation of the federation from the colonial days of the Willink Commission appointed in 1958 to look into the demand for the creation of New States in Nigeria. The Commission found that except for a limited degree in the case of the Ijaws, the representatives of the minorities who came before it saw in a separate state the remedy

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<sup>6</sup>Ibid., 20.

<sup>7</sup>*Report of the Proceedings of the Constituent Assembly – 1988 - 1989*, vol. 1, xiii.



for the dangers they feared. Most when questioned, replied emphatically that nothing else but a separate state would serve their purpose.<sup>8</sup> Ninety percent of our respondents were in favor of creation of new states.

In 1976, the Federal Government White Paper on the Report of the Panel on the Creation of States accepted that part of the agitation for the creation of states resulted from bad government. It stated:

Even if the government established 'one family one state,' there would continue to be agitation for more states whenever there was vacillating and purposeless government. But with the right leadership and good government committed to balanced development, it will be possible to contain states agitation arising from neglect, discrimination and minority fears.<sup>9</sup>

The Government *White Paper* referred to above was rather utopian in its hopes and aspirations. Phrases like "right leadership"; "good government committed to balanced development" are not easily realizable in our political history and evolution. Indeed the institution of the Irikefe Commission in 1975 to inquire into demands for separate states and boundary adjustments attests to the fact that the White paper misjudged the governments of Nigeria to that date. And perhaps it is worse today.

The Constituent Assembly 1978 made provisions for new states and boundary adjustments. The 1979 constitution therefore provided in Article 8: "An Act of the National Assembly for the purpose of creating a new state shall only be passed if ..."

The conditions that follow will be hard to satisfy so by all intent and purposes the

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<sup>8</sup>*Report of the Commission Appointed to Enquire into the Fears of Minorities and the Dreams of Allaying Them* (London: HMSO, 1958), 28.

<sup>9</sup>Federal Government, *White Paper on the Report of the Panel on the Creation of State*(Lagos: Federal Government Printer, December 1976). See also Federal Representatives of Nigeria, *Report of the Panel Appointed by the FMG to Investigate the Creation of More States and Boundary Adjustments in Nigeria* (Lagos: Federal Government Printer, December 1975).

creation of new states would remain a dream. The military have created all States in Nigeria by Decrees.

The 1988 Constituent Assembly merely repeated in Article 9 what the 1979 Constituent Assembly provided for in Article 8. The reason being that new state creation was one of the items in the no-go areas. So then what impact had the two Constituent Assemblies on our Constitutional and political evolution? Not much.

### *Federal Principle*

Before 1976 Local government was a matter for Regional/State government. The Regional/State governments had the constitutional right to determine the number of divisions and districts to create, on what basis they are to be created and how to choose their Chairmen and Counselors. The Regional/State government also determined the residual functions to leave to the government in their areas of authority. During this period, Nigeria could be said to have satisfied the term Federal Principle and therefore was indeed a federation. It was felt then that because of the diversity in the Nigeria cultural and social set up, having a uniform Local Government system in the country would be inappropriate and that the Regional/State governments were better placed to decide which local government system would be suitable for each region.<sup>10</sup> The establishment of development area offices was intended to provide some basic services within every local government council area.

The Political Bureau *Report* of 1987 points out that the relationship, which existed between state, and local government is a “superordinate/subordinate

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<sup>10</sup>Okechukwu Okeke, “Local Government, Federalism and Presentative Government,” *Weekly Sunray*, June 27, 1993, 17.

relationship.” Such relationship is inevitable because of the power of central supervision, which state governments have over local governments. The Political Bureau advocates for a much more positive relationship that is dependent on the evolution of mutually reinforcing relations. This work has gone to great lengths in reviewing local government standing in the Nigerian federation because it will form the basis for some prescriptions regarding what form of constitution Nigeria should adopt. It is agreed that the problem Nigeria is facing is not only the substance of the constitution, but, most significantly, the actors and operators of the constitution.

The empowerment of local government has destroyed the federal principle as discussed earlier. It is the 1988 constituent assembly that oversaw this empowerment. In 1976, the federal military government began to interfere in local matters. That year Obasanjo’s government promulgated a decree that established a uniform local government system for Nigeria and created local governments in all the states of the federation. However, Obasanjo’s administration did not recommend, nor did the Constituent Assembly of 1978 include in the 1979 constitution, any provisions that denied state government the power to create new local governments whenever the constitution became operational.

During the second republic all the new local governments that came into being were created by the state governments. During Obasanjo’s regime as well as the second republic state governments had substantial powers over local government councils through the instrumentality of the local government ministries. Significantly federal funds were sent to the local governments through the state governments.

The 1978 Constituent Assembly did not create a situation whereby local governments were seen as anything other than units of the states without direct links to the center. The Dasuki Committee Report of 1987 on the review of local government administration in Nigeria attributed the problems of local government to operational factors arising directly from behavior and attributes of the persons who operated the system. These operational problems hinder equitable distribution of amenities in the whole local government area. Such inequitable distribution tended to weaken the local government system.

### *Ethnicity and Federal Character*

Ethnicity is another thorny issue addressed in this work. It comes along with the vexed issues of Federal Character and National Question.

The CDC on October 18, 1975 advocated, inter alia:

- i. An Executive Presidential system of government in which:
  - a. The President and Vice-President are elected, with clearly defined powers and are accountable to the people. There should also be legal provisions to ensure that they are brought into office in such a manner as to reflect the Federal character of the country; and
  - b. The choice of members of the Cabinet should also be as would reflect the Federal Character of the country.

On special issues that plague this country, ethnicity was voted high, i.e. third out of seven issues. The Constituent Assembly 1978 adopted the concept of federal character and entrenched it under the Fundamental Objectives and Directive Principles as noted in this work. It is however interesting to observe that the Constituent Assembly

1978 also provided for federal character in the composition of the officers corps and other ranks of the armed forces of the federation. This provision under Article 197(2) is justicable while the provisions under the Fundamental Objectives and Directive Principles are not justicable – (see Article 14(3)). Corresponding provisions are made under Articles 217(b) and 15(3) in the 1989 Constitution.

### *Judicial Independence*

Respondents were in favor of appointment to high judicial offices being made by an independent Judicial Commission subject to confirmation by the legislature. Respondents condemned judiciary financial dependence on the executive. They advocated that the judiciary be made self-accounting in both capital and recurrent estimates. They pointed out that judges should draw their salaries from the consolidated fund, as enshrined in the constitutions of 1979 and 1989.

Murtala Mohammed at the inaugural meeting of the Constitution Drafting Committee on October 8, 1975 recommended for the consideration of the committee an independent judiciary to be guaranteed by incorporating appropriate provisions in the constitution as well as by establishing institutions such as the Judicial Service Commission. The CDC faithfully made recommendations to ensure the independence of the judiciary in the draft constitution. The 1978 Constituent Assembly entrenched in Chapter (VII) of the 1979 constitution provisions that guarantee the independence of the Judiciary. The Third Schedule part 1 established under Article 140 (1) the Federal Judicial Service Commission. Provisions for State Judicial Service Commission were made under Third Schedule Article (11) established by Article 178 of the 1979

constitution. According to this Article, the powers of the two commissions are merely advisory, except that:

- (a) The Federal Judicial Service Commission has power to appoint, dismiss and exercise disciplinary control over the Chief Registrars and Deputy Chief Registrar of the Supreme Court, the Federal Court of Appeal and the Federal High Court.
- (b) The State Judicial Service Commission has similar powers over corresponding officers in the states.

The 1988 Constituent Assembly could not deliberate on (a) and (b) above as they fell under the no-go areas. The provisions on Judicial Service Commission in the 1979 constitution were accordingly entrenched in the 1989 constitution. The legal dispute about the cancelled June 12 Presidential election brought the independence of the judiciary to public scrutiny as courts of co-ordinate jurisdiction appeared to have been politicized in their handling of electoral matters before them. Lamenting dereliction of duty by the judiciary, the *Daily Times* said:

The tragedy of a sick judiciary does not even end with the shattered expectations of citizens. A morbid bench from the outset finds itself incapacitated in the discharge of its sacred duty as the legal watch-dog of the nation. It cannot uphold the rule of law; neither can it administer justice without fear or favor nor prevent the citizens rights from being imperiled by over-bearing government functionaries.<sup>11</sup>

Again the problem was not with the constitution, but with the operators, including judges.

#### *National Electoral Commission, the Courts and the Constitution*

All legal disputes of the cancelled June 12, 1993 Presidential election ended when the Appeal Court, Kaduna division struck out a motion brought by NEC on the election. Presiding Justice Okey struck out the motion at the insistence of NEC's

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<sup>11</sup>*Daily Times* "Editorial," March 25, 1985.

lawyer, Yohanna Madaki who told the court that the motion had been overtaken by events. In the motion, NEC had sought an order directing the registrar of Abuja High Court No.9, Justice Bassey Ikpeme to furnish the electoral body with copies of the court's rulings of June 10, restraining NEC from conducting the Presidential election and an interim injunction granted by the federal capital territory Chief Judge Dahwi Saleh restraining NEC from further announcing the results of the election. Madaki told the court, "in view of the present situation in the country, it would appear that the continuation of the matter might be an exercise in futility."<sup>12</sup> he therefore urged the court to strike out the motion . . .

On the spate of high court cases in the wake of suspended results of the June 12, 1993 Presidential election Chike Osanakpo said; "in the long run it is the image of the judiciary that will be damaged. The high courts ... should take judicial notice of other high court's rulings and judgments and decently deal with any disagreement they may find before making public pronouncements."<sup>13</sup> He was appalled by the phenomenon whereby one high court issues an injunction and another makes an order contrary thereto.

Judges should generally apply the legal concepts of public policy to issues of politics (as was done in the famous Shagari/Awolowo 12 two-thirds (12 2/3) matter.) At stake were the provisions of Decree No. 13 and 52 that were annulled, the cancelled June 12, 1993 Presidential election and the suspension of NEC that conducted the

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<sup>12</sup>Lawal Ogiansogben, "NEC's Motion Struck Out in Kaduna," *Sunday Times*, June 27, 1993, 7.

<sup>13</sup>Bapakaye Dibi, "Lawyers Fault Nwosu and Decry High Courts' Injunctions" (Chike Osanakpo contributes to this article), *Daily Sunray*, June 25, 1993.

election. Babangida and the National Defense and Security Council (NDSC) said the measures were taken to “protect the nation’s legal system and judiciary from being ridiculed and politicized nationally and internationally.”<sup>14</sup> The statement reads:

In view of the spate of litigations pending in various courts, the Federal Military Government is compelled to take appropriate steps in order to rescue the judiciary from intra-wranglings . . . it is common knowledge and an indisputable fact that the last hope of all law abiding citizens is the resort to the courts. Government will not fold its arms or despair in the face of this unfortunate and unwarranted situation which is fast eroding the esteemed honor and confidence with which the public holds the nation’s judiciary . . . No responsible and responsive government would watch its judiciary built on sound and solid foundation to be tarnished by the insatiable political desire of a few persons.<sup>15</sup>

The statement continued: “In our attempt to end this ridiculous charade which may culminate in judicial anarchy, government has decided, to:

1. Stop forthwith all court proceedings pending or to be instituted and appeals thereon in respect of any matter touched, relating, or concerning the Presidential election held on June 12, 1993.
2. The Transition to Civil Rule Political Program and the Presidential Election Basic Provisional Decree No. 13 of 1993 are hereby repealed. All acts done or purported to have been done or to be done by any person, authority etc. under the above named decrees are hereby declared invalid.

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<sup>14</sup>“June 12 Annulment,” *Daily Times*, June 24, 1993, 1.

<sup>15</sup>*Ibid.*, 1, 20.



3. The National Electoral Commission is hereby suspended. All acts or omission done or purported to be done by itself, its officers or agents under the repealed Decree No. 13 of 1993 are hereby nullified.

Dan Musa, Chairman of Association for Nigerian Destiny appealed to President Babangida to reject the Presidential results. Hear the Association:

Reports from our Co-ordinators Nation-wide spoke of ethnic harassment to the extent that even in some areas in this country it is a taboo to mention the name of a particular candidate.<sup>16</sup>

The Association continued:

In some specified areas in Idi-Araba, Lagos, ballot boxes were stolen and NEC officials arrested, some polling stations in Agege were closed as early as 9:30 a.m. to stop supporters of a particular candidate from voting. In many polling stations in Akure, there were fracas where police had to use teargas; the same chaos was observed in Mushin, Lagos State. In Kano many people were arrested when they came to vote. In Sokoto 15 NEC officials were apprehended on charges of inflating figures, in the East many people came out with machetes brandishing them at opponents.<sup>17</sup>

The Association appealed to Babangida to reject the result of the election in its totality. It also asked that the two political parties be dismantled forthwith. That Nigeria should be given “one huge opportunity” to set up political parties of their choice and nurture them through their own will and vigor. “This is the only option” that will determine whether Nigerians are in support of Presidential or any other system they so desire.<sup>18</sup>

The first judicial intervention entangling the transition process was made on June 10, 1993 by Justice Bassey Ikpeme of the Abuja High Court who restrained the

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<sup>16</sup> Reported in “June 12, Annulment”, *New Nigeria*, 3.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

National Electoral Commission (NEC) from conducting the presidential poll on June 12, 1993. Her order was in respect of an injunction sought by a controversial anti-democracy group, the Association for Better Nigeria (ABN), which had been campaigning for a four-year extension of President Babangida's tenure that was to end on August 27, 1993. INEC ignored Justice Ikpeme's ruling on the strength of the Presidential Election (Basic Constitutional Provisions) Decree 13 of 1993 which shielded it from court orders in the discharge of its statutory electoral functions. NEC therefore ordered that elections must go on as scheduled. However Mr. Justice Saleh granted another injunction in favor of the ABN on June 15, restraining NEC from announcing the poll's result. As at that day, NEC had announced results from 14 of the 30 states of the federation, and the result from the Federal Capital Territory (FTC), Abuja. Curiously enough NEC bowed to the ruling pending its appeal against Justice Bassey Ikpeme's order and the High Court's jurisdiction in the suit.

Mr. Justice Saleh's ruling was sequel to a suit by Mr. Abinbola Davis and Mr. Jerry Okoro on behalf of the ABN, asking the court to declare the election illegal. Joined in the suit were NEC, the Federal Attorney General, National Defense and Security Council (NDSC) and President Ibrahim Babangida. Section 19(1) of Decree 13, the legal interpretation of which the plaintiffs sought states: "Notwithstanding the provisions of the Constitution of the Federal Republic of Nigeria 1979 as amended by any other law, no interim or interlocutory order or ruling, judgment or decision made by any court or tribunal before or after the commencement of this decree in respect of intra-party or inter-party dispute, or any other matter before it shall affect the date or time of the holding of the election, or the performance by the commission of any of its

functions under this decree or any guidelines issued by it in pursuance of the elections.”<sup>19</sup> Justice Saleh apparently did not oust the jurisdiction of this court and granted the injunction restraining the Commission from announcing the poll’s result.<sup>20</sup> By Decree 40 cited as Transition to Civil Rule (Political Program) Amendment of June 1993, all political programs scheduled for the second and third quarters of 1993 were deleted.

With regard to the June 12, 1993 Presidential Election, the Federal Military Government promulgated Decree 41, the Presidential Election (Invalidation of Court Order) that ousted the jurisdiction of any court to hear any case relating to the election. Decree 41, dated June 22, 1993 had a retroactive effect. It provided that any appeal instituted in any court, before the commencement of the Decree in relation to June 12, election shall be null, void and of no effect whatsoever. It further provides that notwithstanding any other provision of the Constitution of the Federal Republic of Nigeria 1979 as amended, the African Charter on Human and Peoples Right (ratification and enforcement) Act or any other enactment, no proceedings shall lie or be instituted in any court for or on account of any act, matter or thing done or purported to be done in respect of the Decree.

#### *Constitutional Provisions and Authentic Constitutionalism*

The need for a home-grown constitution was emphasized by President Ibrahim Babangida when he inaugurated the Political Bureau on January 13, 1986. Said he:

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<sup>19</sup>Section 19(1) of Decree 13.

<sup>20</sup>“Court Voids Presidential Election,” *The Guardian*, June 23, 1993, 1–2.

I would like to warn that this Administration does not want a regurgitation of the political models of the so-called advanced countries of the world. If this were our desire we would simply have turned to the many volumes and various encyclopedia on these alien constitutions and political models. That should not be your way forward.<sup>21</sup>

Babangida recalled our socio-economic settings that call for special considerations in the task of constitution making. He went on:

We share neither the political history nor the political culture of these lands. Our demographic settings and social structures differ vastly from theirs. We presently lack the sophisticated and advanced industrialism that provides the economic foundations for these alien political models.<sup>22</sup>

That Nigeria should have a constitution is settled. There are also some “agreed ingredients” of Nigeria’s political order, such as federalism, presidentialism, the non-adoption of any religion as state religion, and the respect and observance of fundamental human rights. To these ingredients President Babangida added “the two party system.” But what does Babangida mean by two party system? It has been discussed at length the conditions precedent in the formation of political parties. As it turned out, to Babangida two party system means two parties imposed by himself on the nation. This single act is, here, considered responsible for the turmoil into which the Transition Program was thrown.

As Obasanjo rightly pointed out, a two party system in Nigeria would likely have ended in a geographical division, exacerbating one of our most persistent tensions, the North-South dichotomy super-imposed on religious divisions and intolerance and

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<sup>21</sup>*Report of the Political Bureau, 5.*

<sup>22</sup>*Ibid.*

thereby increasing instability.<sup>23</sup> The second reason given by Obasanjo is that such determination (i.e., two party formation) should come through evolution and not legislation. Obasanjo however recommends what he calls a mono-party. He then becomes apologetic – “while I am not saying that an integration process through a mono-party will solve all our problems, I am saying that unity of purpose will go a long way to advance our aim.”<sup>24</sup>

Through what means should Nigerian adopt a constitution? Respondents favored a constitution drawn by an elected National Conference. Should Nigerians adopt a dependency constitution or home grown? 85% was in favored of home grown.

### *Political Party Systems*

Advocates of the zero party option feel disillusioned with the way political parties have functioned in Nigeria and elsewhere in Africa. This work recalls the disgust shown by one of the zero-party adherents, towards the two party/multi-parties option

Party politics is poisonous. It is the politics of war not peace, of acrimony and hatred, mudslinging not of love and brotherhood; of anarchy and discord, not of orderliness and concord; it is politics of cleavages, divisions and disunity and not of co-operation, consensus and unity, - it is the politics of hypocrisy and charlatanism not of integrity and patriotism, it is the politics of rascality, not maturity; of blackmail and near gangsterism, not constructive honest consideration....<sup>25</sup>

The Constitution Drafting Committee in its report in 1976 separated a two-party system from a multi-party system. When faced with the problem of choice, the CDC opted for a multi-party system rather than a two-party system. The CDC went on to

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<sup>23</sup>Obasanjo, *Constitution for National Integration*, 74.

<sup>24</sup> Ibid., 3.

<sup>25</sup>*Report of Political Bureau*, 128.

argue that a two-party system was usually the product of an historical growth and that over time Nigeria could develop a two-party system. In other words the CDC regarded the two-party system as ideal, but would rather let it evolve over time. Similarly a good number of supporters of the multi-party system during the CDC debate expressed the hope that eventually a two-party system would emerge, but like the CDC they would rather prefer that we waited for its evolution.

Despite the real fears of North-South dichotomy and the divisive problem of religion, respondents opted for the two-party option. Though the much talked about home-grown constitution which the Constituent Assemblies were enjoined to fashion out proved elusive, the efforts of the 1978 Constituent Assembly in this direction must be recognized. The impact of the 1978 Constituent Assembly crystallizes in the areas of Fundamental Objectives and Directive Principles of state policy. The agreed ingredients of Nigeria's political order are products of the CDC and the 1978 Constituent Assembly political craftsmanship. The notion of Federal Character has sensitized Nigeria's political system, even as the National Question persists. The Federal Character notion is designed to allow all areas of the country to gain employment opportunities and combat political and economic marginalization.

The Constitution Review Committee (CRC) was warned that its assignment was limited to reviewing the 1979 Constitution. That it did, but left the 1979 Constitution still defective. As for the 1988 Constituent Assembly, it may have been a desired brain child of Babangida but it was still-born and left our constitutional development and political evolution in a fix. It was noted earlier that through amendments (by Decree of course) what may be left of the 1989 constitution will be confusion rather than clarity.

The enormous waste in man-power and material on the CRC and the 1987 Constituent Assembly, and the CDC that preceded the 1995 Constitutional Conference, is to be lamented. In addition, the CDC that preceded the 1995 Constitutional Conference suffered the same fate as those of 1978 and 1988 in terms of composition, structure and acceptability by the Nigerian nation. The Constitutional Conference of 1994/95 was supervised and guided by the CDC of 1994, which was not democratically elected. The President, General Abacha had his share of nominated members who represented his interest as a military dictator. The ratification of the 1995 Constitution was the responsibility of the military government. The much needed Constitution by Nigerians for Nigeria was again aborted.

#### *Summary*

Evaluation of the research findings spans across issues such as Constitutional Dependency, Ethnicity, Minorities, Revenue Allocation, Resource Control and the no-go-areas. Sharia as well as federal characters were not left out. The findings reflect the patriotism of Nigerians – which is centered on their level of loyalty i.e. ethnicity. The issue of revenue allocation and resource control tore the constituent assemblies part. The geo-political zones that were endowed with rich mineral resources were quick to assert their control over their resources. They emphasized their readiness to pay tax to the federal government while what is left should be for the development of the impacted areas. They claim they suffer untold hardship as a result of mineral exploitation and exploration. Aquatic life is ruined. Water pollution abounds.

Sharia supporters accepted the no-go-areas of Babangida as long as Sharia discussion was outside the jurisdiction of the Constituent Assemblies. Federal

Character principle was opposed by the major ethnic groups – Ibos, Yoruba and Hausas. This principle was nevertheless enshrined in Nigeria's constitution. The question of implementation still haunts Nigeria. These issues will be considered in the final chapter under Recommendations.



## CHAPTER X

### CONCLUSIONS AND RECOMMENDATIONS

Nigerians have spoken. The research findings indicate that Nigerians are fed up to the teeth with military seizure of power. Their verdict is that the Military regime is an abomination and must not continue. Nigerians blame the leadership for failing them in their march towards democratization and political evolution. However, the followership is not without blame for this failure. It is the masses who cheered Babangida each time he spoke ex-cathedra. He was the “political Maradona”, they say. But the Nigerians eventually scored the winning goal and Babangida’s team lost the match. It was too late for Babangida to move the political goalpost of his Transition Program. The referee, the people, had blown the whistle, and the game was over.

The contribution of the CDC to the constitutional and political evolution of Nigeria must be recognized and commended. Although the much discussed home-grown constitution, which the Constituent Assemblies were enjoined to fashion, proved elusive, the efforts of the 1978 Constituent Assembly in this direction are recommended. The impact of the 1978 Constituent Assembly crystallized in the areas of Fundamental Objectives and Directive Principles of State Policy is commended. The agreed ingredients of Nigeria’s political order are products of the CDC and the 1978 Constituent Assembly political craftsmanship. The notion of Federal Character has, in our opinion, sensitized the political system even as the National Question persists.

The CRC was warned that its assignment was limited to reviewing the 1979 Constitution. That it did, but it left the 1979 constitution unworkable. As for the 1988 Constituent Assembly, it may have been a desired brainchild of Babangida, but it was stillborn and left the constitutional development and political evolution in a state of quandary. It was noted earlier that, through amendments (by Decree, of course), what may be left of the 1989 Constitution will be confusion rather than clarity. The enormous waste in manpower and materials on the CRC and the 1987 Constituent Assembly are lamentable.

On state creation, it must be admitted that it does not solve the myriad problems of the country, such as an unbalanced federalism, regionalism and statism, lack of accountability and its attendant corruption, ethnic sentiments, the use of an ethnic platform for political competition, religious bigotry, minority fears, marginalization of women, and inequality in the distribution of national wealth. There is also the lack of a chief executive, who must function as a symbol of national unity, have leadership qualities and sense of direction for the country, and be a political leader in his own right. State creation is not a panacea for all or most of Nigeria's ills. The Federal Military Government recognized this in 1976 when it stated:

Even if the government established one family, one state, there would continue to be agitation for more states whenever there was a vacillating and purposeless government. But with the right leadership and good government committed to balanced development, it will be possible to contain states agitation arising from neglect, discrimination and minority fears.<sup>1</sup>

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<sup>1</sup>Federal Representatives of Nigeria, *Report of the Panel Appointed by the FMG to Investigate the Creation Of more States and Boundary Adjustments in Nigeria*, 9.

Responses to the questionnaires were near unanimous in asking for more local government areas and new states. The decentralization of local government as recommended above will in turn de-emphasize statism and emphasize national consciousness. Nigeria would then have advanced in its political evolution. Ethnicity would then take the back seat in the drive toward one true Nigeria and one destiny.

Babangida's administration, it must be conceded, has partially advanced democratization in Nigeria. This has happened at the grass-roots level; i.e. local government. There are democratically elected governors and legislative assemblies in the states. At the federal level, the national assemblies were democratically elected and are functional. However, they were legislatively emasculated by Babangida's no-go area fiat. Following the annulled June 12, 1993 presidential election, the fate of a democratically elected President still hangs like the sword of Damocles on the democratization process and political evolution. (The successful election of a President for Nigeria now falls outside the scope of this dissertation.)

The notion of the "immaculate conception of western civilization" has been shaken to its very foundations by Professor George James. Professor Claude Ake added his voice in attacking the same notion. However, Nigeria has for long been fed from the ethnocentricity of western civilization. Some academics have adopted a reserve position to advocate the notion of Afrocentricity. Herbert Macaulay, Nnamdi Azikiwe, Obafemi Awolowo, Ahmadu Bello – all were nationalists who challenged British imperialism and led Nigeria to independence. They made no serious departure from the British system of constitution. They were all great men and great nationalists. However, the dependency on the British was overwhelming, if only to gain our political independence

from the British. These men – the personae dramatis of early Nigerian politics – gave Nigeria what has been referred to in this research as the Dependency Constitution. That was a manifestation of mental bondage by the British who claim ultimate civilization. James refers to that situation thus:

Mental bondage is invisible violence. [Mental] slavery affects the minds of all people and in one way it is worse than physical slavery alone ... the person who is in mental bondage will be “self-contained.” Not only will the person fail to challenge beliefs and patterns of thought which control him, he will defend and protect those belief and patterns of thought virtually with his last dying efforts.<sup>2</sup>

Nigeria has experimented with different kinds of political and constitutional systems. By 1995 it had practiced parliamentary and presidential systems for ten years since Nigeria attained political independence – parliamentary from October 1, 1960, to January 15, 1966, and presidential from October 1, 1979, to December 31, 1983. Civilians were in power during the periods. For the other twenty-one years, the military were in power in Nigeria. The military claim to parliamentary or presidential system of government cannot hold, since their regime is characterized by military command. It is with the military that the term Diarchy and Triarchy found their place in Nigerian forms of government. Military rule in Nigeria was characterized by unitarianism and local government empowerment, while federalism was the feature of the civilian government. The military imposed two parties, the NRC and SDP, on Nigeria. The Constituent Assembly 1988, on the orders of Babangida’s administration, enshrined these two parties in our constitution.

Since Nigeria’s independence, Constituent Assemblies have been instituted by the military. The 1978 Constituent Assembly gave Nigeria the presidential form of

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<sup>2</sup>James, *The Stolen Legacy*.

government. Therein lay the positive impact of the 1978 Constituent Assembly.

Even then, the changeover to the presidential system could equally have been affected by constitutional amendment. As for the 1988 Constituent Assembly, it was a retrograde step to that of 1979. The military masterminded the 1988 constitution with its notorious no-go area conditionalities that teleguided the outcome of the Assembly's work. This study has made it abundantly clear that Babangida's military government rather than the Constituent Assembly ratified the 1989 constitution. The amendments to the 1989 constitution, as detailed in this work, has attached "all manner of junk" to the document. The appeal by Babangida to the Constituent Assembly to fashion a home-grown constitution could not take off. The input by Babangida himself made the assignment a "mission impossible."

The injunctions and fiats by Babangida are alien to African constitutions as richly demonstrated by Chancellor Williams. There is, therefore, a crying need for a Constituent Assembly that will deliberate unfettered and fashion an autochthonous constitution for Nigeria.

### *Recommendations*

Presented below is a series of recommendations for the way forward regarding constitutionalism in Nigeria.

### *Women*

Women, who represent 50% percent of the population, must be politically empowered and united as their votes can make all the difference in an election. This empowerment should include political awareness, political participation, a clear policy-making role, more equitable representation in the organs of government.

*The Youth*

The future leaders of Nigeria with voting power of 25.32% should be empowered by offering them sound education and jobs.

*National Issues and Problems*

The national problems and issues have been addressed. The operators of the Constitution should put self last and serve the nation. Nigerian Constitution should be fashioned by responsive civilians elected to serve. The Constituent Assemblies, in particular, were teleguided by the military and produced what the military desired. The no-go area syndrome militated against meaningful consideration of issues of constitutionalism.

An African-oriented Constitution as portrayed in Chapter VII is recommended. Should this approach not be immediately feasible, then a step back in Nigeria's political evolution to fashion a 1979 type of constitution, and particularly accept and operate a local government system as enshrined in that constitution is recommended. Such a constitution should be created by a democratically elected Constituent Assembly.

The crux of this recommendation is decentralization of local governments in the country. There are currently (in 2008) 747 local governments in Nigeria. There should be subordinate entities to these local governments. The motivating force behind adopting the additional entities to the local governments is to decentralize government activities throughout the local government areas. On this issue of decentralization the researcher is very passionate and even recommends it for the national level for adoption.

The units should be categorized into:

- (i) City Councils,
- (ii) Urban Councils
- (iii) and District Councils.

This nomenclature will reflect the geographical and social setting of each local government area that forms their parent body. The three listed entities will be known as development area councils. In constituting such councils, attention should be paid to factors of common historical and traditional ties, geographical contiguity, and shared administrative experience. To further decentralize, village or neighborhood committees should be established in every development area.

The functions of these councils could well be divided as follows. Special responsibilities should be delegated to the development area councils and the village or neighborhood committees. The Chairmen of village or neighborhood committees should be members of development area councils; i.e., city, urban and district. An elected member of the local government council from the area should be chairman of the development area. Where council areas are large, the chairmanship should rotate annually among them. The local government share of the Federation Account should be not less than twenty percent, as it is at present the case. It should, in fact, increase with any added responsibilities. The state should contribute ten percent of its internally generated revenue to the state-local government joint account. The local government councils should have ten to fifteen members. Finally, a National Local Government Commission should be established to enforce staff discipline, among other responsibilities.

*General Recommendations*

Previous scholars have attempted to explain the phenomenon of constant constitutional changes in Nigeria. Some scholars blame the content of the constitution as the problem. Others say it is the operators of the constitution or those that crafted it. The non-democratic features of our constitution were also frowned at. The injection of nominated members into Constitution Drafting signaled failure *ab initio*. The infamous no-go areas and sharia created more heat than reason during debates. Self or ethnic interests dominated the debates. Democratic principles were therefore compromised. From the ongoing scenario the jinx can be broken by proffering some ways out of recurrent constitutional changes in Nigeria. These ways include:

- i. Freely elected National Constitutional Conference should be instituted. This body should draw up a constitution for the country. The body should reflect a cross-section of the Nigeria nation in terms of representation. Nigeria with over 200 ethnic groupings should be divided into geo-political zones to achieve justice and equity. The majority zones and minority areas will then have a sense of belonging to this nation called Nigeria.
- ii. The Land Use Act should be abolished
- iii. On shore/off shore dichotomy should be abolished
- iv. Greater control over natural resources should be left with the areas that suffer hardship as a result of exploration and exploitation of mineral resources.
- v. Restructuring of the Nigerian constitution to give voice to the “minority,” and allow them the opportunity to produce a President for the country,



should be actively pursued. This restructuring should include a rotational presidency among the various geo-political zones in the country. This arrangement will give the minorities some hope of run the affairs of this great country.

- vi. Local government areas should be the federating units and not the states as present.
- vii. Ethnic sentiments and religious bigotry should be discouraged by politicians who use these structures to their political advantage.
- viii. Youths and women should be empowered to play active role in the political advancement of Nigeria. They account for over 60% of the Nigerian voting population.

It is our view that if Nigerian Constitution framers take note and apply the above injunctions, the much talked about home grown constitution will be ours at last.

#### *Research Update*

Babangida was eased out of office and Abacha became the Head of State from 1993 to 1998. It is interesting to note that the 589 local government units quoted earlier were increased by the Abacha regime to 774.

Other Heads of State after Abacha were:

- |                                 |              |
|---------------------------------|--------------|
| 1. General Abdulsalami Abubakar | 1998 to 1999 |
| 2. President Olusegun Obasanjo  | 1999 to 2007 |
| 3. President Umaru Yar, Adua    | 2007 to –    |

In 2007, President Obasanjo set up a National Political Reform Conference made up of appointed members under the Chairmanship of Justice Niki Tobi, to look

into the political affairs of the country and submit a report to the Presidency.

Some of the issues before the conference include:

- Revenue Allocation
- Resource Control
- Restructuring of the Nigeria nation.
- Power Sharing (Rotational Presidency).

The above issues, among others, were not resolved before the conference ended.

In view of this, Nigerians are already calling for another Constitutional Conference to deliberate over the political future of Nigeria.

## APPENDICES

**Appendix A****State Creation Timeline**

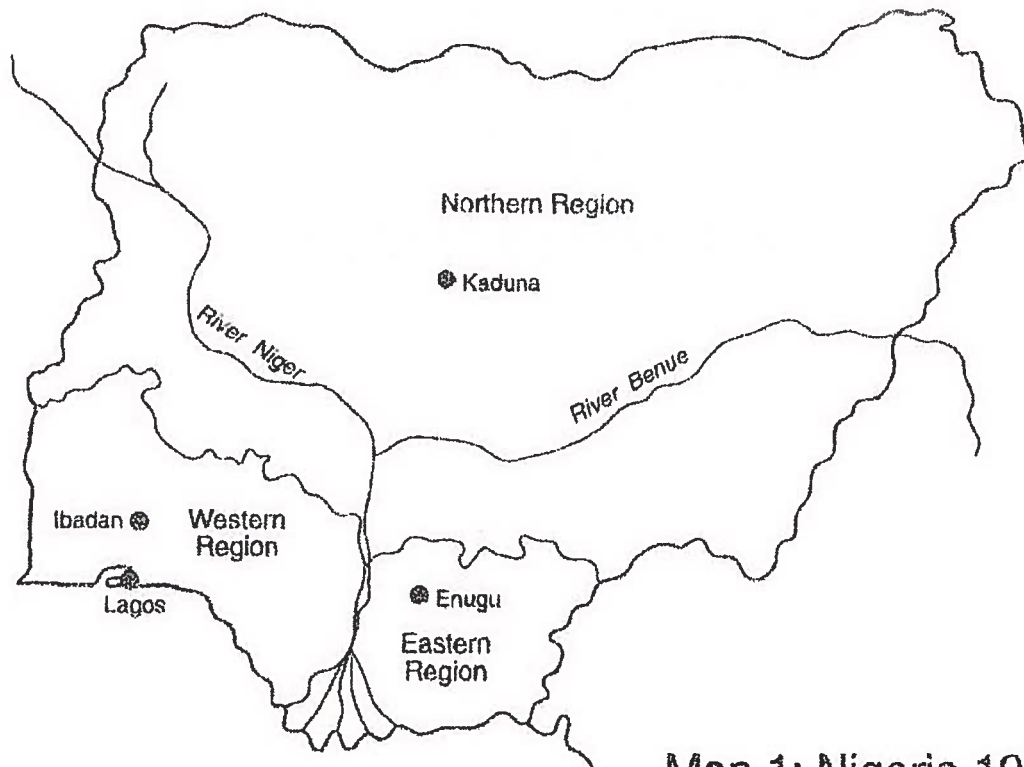
<b>Date</b>	<b>Number of Regions/States</b>
1955	3 Regions
1963	4 Regions
1967	12 States
1976	19 States
1987	21 States
1991	30 States
1996	36 States

## Appendix B

### Nigeria in Maps: Regions and States, 1955 - 1997

#### MAP 1

#### Map of Nigeria Showing Three Federal Regions Created by British Colonial Rule



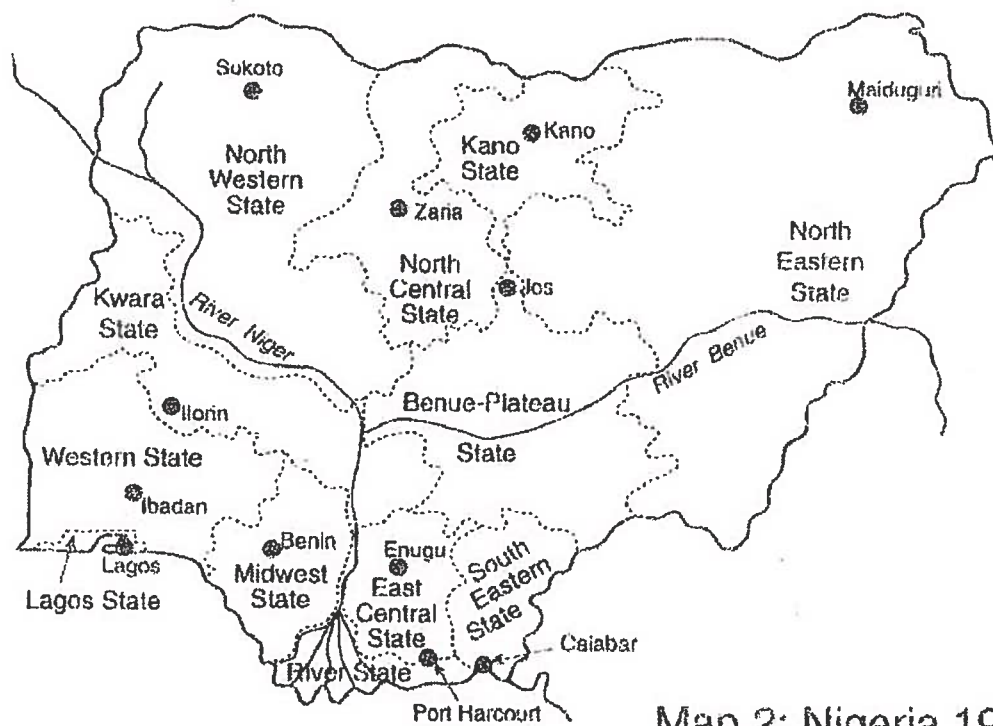
Map 1: Nigeria 1954

Source:

[http://www.waado.org/nigerian\\_scholars/archive/pubs/wilber1\\_map1.html](http://www.waado.org/nigerian_scholars/archive/pubs/wilber1_map1.html)

## MAP 2

**Map of Nigeria Showing Twelve Federal States  
Created by Federal Military Government on the Eve of Civil War**



Source:

[http://www.waado.org/nigerian\\_scholars/archive/pubs/wilber1\\_map2.html](http://www.waado.org/nigerian_scholars/archive/pubs/wilber1_map2.html)

### MAP 3

**Map of Nigeria Showing Thirty-six Federal States  
Created by a Series of Federal Military Governments through Military Decrees**



**Map 3: Nigeria 1997**

Source:

[http://www.waado.org/nigerian\\_scholars/archive/pubs/wilber1\\_map3.html](http://www.waado.org/nigerian_scholars/archive/pubs/wilber1_map3.html)

## BIBLIOGRAPHY

- Abubar Iya, "In Support of Sharia," *New Nigeria*. November 11, 1977.
- Ake, Claude. *A Political Economy of Africa*. London: Longman Group, 1981.
- Aristotle. *The Politics*. New York: Penguin Group, 1981.
- Azikiwe, Nnamdi. *Democracy with Military Vigilance*. Nigeria: Africa Book Company, 1972.
- Babangida, Ibrahim. *Address to Constituent Assembly*. Lagos: Government Printing Office, 1987.
- Babangida, Ibrahim. *Address to the Nation on Political Program for the Country, Transition to Civil Rule*. Lagos: Government Printing Office, 1992.
- Bailey, Kenneth D. *The Methods of Social Research*. London: The Free Press, 1987.
- Bapakaye Dibi, "Lawyers Fault Nwosu and Decry High Court's Injunction." Chike Osara contributes to this article. *Daily Sunray*. June 25, 1993
- Barker, Ernest. *Reflections on Government*. Oxford: Oxford University Press, 1958.
- Beard, Charles A. *American Government and Politics*. London: The MacMillan Company, 1935.
- Bell-Gam, Ruby and David Uru Iyam, *Nigeria*, Rev. ed. *World Bibliographical Series*, v. 100. Oxford: Clio Press, 1999.
- Blackburn, Helen. *Women's Suffrage*. London: Williams and Norgate, 1902.
- Brown, Peter G. *Legal Practitioners Handbook*. Jos: Galz Press Ltd., 1900.
- Carnoy, Martin. *The State and Political Theory*. Princeton, NJ: Princeton University Press, 1984.
- Catt, Carrie C., and Nettie Rogers Shuler. *Women's Suffrage and Politics: The Inner Story of the Suffrage Movement*. New York: Charles Scribner, 1926.
- Chazan, N., R. Mortimer, J. Ravenhill, and D. Rothchild. *Politics and Society in Contemporary Africa*. Boulder, CO: Lynne Reiner, 1988.



Chilcote, Ronald H. *Theories of Comparative Politics: The Search for a Paradigm*. Boulder, CO: Westview Press, 1981.

Civil Liberties Organization. *A Harvest of Violations*. Annual Report on Human Rights in Nigeria, 1991.

Coleman, James S. *Nigeria: Background to Nationalism*. Oxford: Oxford University Press, 1971.

Constitution Drafting Committee. *Report of the Constitution Drafting Committee*. Lagos, Nigeria: Federal Ministry of Information, 1976.

*Constitution of the Federal Republic of Nigeria*. Lagos, Nigeria: Government Printing Office, 1990.

“Court Voids Presidential Election.” *The Guardian*. June 23, 1993

Corry, J. A. *Elements of Democratic Government*. Oxford: Oxford University Press, 1946.

“Council Chairmen Against Democracy.” *The Guardian*. April 20, 1992.

*Daily Star*. November 21, 1977.

*Daily Sunray*. June 3, 1993.

Demei, Iyorchia. *The Task of the Constituent Assembly*. Abuja, Nigeria: January 1977.

Dent, M. J. “Dangers of Polarity in Religious Matters.” *West Africa*. April 24, 1978.

Dibi, Bapakaye “Lawyers Fault Nwosu and Decry High Courts’ Injunctions.” *Daily Sunray*. June 25, 1993.

Dietze, Godfrey. *The Federalist: A Classic on Federalism and Free Government*. Baltimore, MD: Johns Hopkins Press, 1961.

Dike, K. O. *A Century of British Rule in Nigeria (Lugard Lectures)*. Lagos, Nigeria: Government Printer, 1959.

“Directorate for Social Mobilization.” *Report of the Political Bureau*. Lagos, Nigeria: MAMSER, March 1987.

Dudley, Billy. *An Introduction to Nigerian Government and Politics*. Bloomington, IN: Indiana University Press, 1982.

Edwards III, George C. and Stephen J. Wayne *Studying the Presidency*. Chattanooga, TN: University of Tennessee Press, 1977.

“Editorial.” *Daily Times*. March 25, 1985.

Ekwueme, Alex. “More than Government of National Consensus.” *Daily Champion*. January 22, 1992.

Elazar, Daniel J. *The American Partnership, Intergovernmental Cooperation in the United States*. Chicago: University of Chicago Press, 1962.

Elazar, Daniel J. “The Ends of Federalism: Notes Towards a Theory of Federal Political Arrangements.” In Max Frenkel (ed.) *Partnership in Federalism*. Bern, Switzerland: Peter Lang, 1977.

Federal Government, *White Paper on the Report of the Panel on the Creation of State*. Lagos: Federal Government Printer, December 1976.

Federal Representatives of Nigeria. *Report of the Panel Appointed by the FMG to Investigate the Creation Of more States and Boundary Adjustments in Nigeria*. Lagos, Nigeria: Federal Government Printer, December 1975.

Field, Lowell. *Government in Modern Society*. New York: McGraw-Hill, 1951.

First, Ruth *The Barrel of a Gun: Political Power in Africa and the Coup d’Etat*. London: Allen Lane, 1970.

Friedrich, Carl J. *Constitutional Government and Democracy*. New York: Ginn and Company, 1950.

Friedrich, Carl J. “New Tendencies in Federal Theory and Practice.” Paper Presented at the 6<sup>th</sup> World Conference of the International Political Science Association, 1964.

Gibrill, Hashim. “Some Comments on the State, Class, and Class struggle in Africa.” Mimeo, Atlanta University, Political Science Department, Atlanta, Georgia, nd.

Gress, David. *Plato to Nato: The Idea of the West and Its Opponents*. Beverly Hills, CA: Brooks/Cole Publishing Company, 1998.

*The Guardian*. November 30, 1992.

*The Guardian*. June 9, 1993.

*The Guardian*. April 20, 1992.

Hooks, Bell. *Feminist Theory: From the Margin to Center*. London: South

End Press, 1984.

*House Document No. 95-215*. Washington, DC: U. S. Government Printing Office, 1990.

"IBB's New Agenda." *Newswatch*. November 30, 1992.

Jaggar, Allison M. *Feminist Politics and Human Nature*. Sussex, England: Harvest Press, 1981.

James, George G. M. *Stolen Legacy*. San Francisco, CA: Julia Richardson Association, 1988.

Jinadu, Adele. "Theory of Federalism." In A. B. Akinyemi, P. D. Cole, and W. Ofonagoro eds. *Readings on Federalism*. Ibadan, Nigeria: Ibadan University Press, 1979.

"June 12 Annulment." *Daily Times*. June 24, 1993

Laitin, David D. "The Sharia Debate and Origins of Nigeria's Second Republic." *Journal of Modern Africa Studies*. 20. 1982.

"Lead Article." *Daily Sunray*. March 26, 1993

"Local Government Tenure." *Daily Champion*. February 12, 1993.

Lloyd, P. C. *Africa in Social Change*. Hammondsworth, England: Penguin, 1967.

Mamdani, Mamood. *Politics and Class Foundations in Uganda*. New York: Monthly Review, 1976.

Manisara, A. M. *The Five Majors: Why They Struck*. Zaria: Hudahuda Publishing Company, 1982.

Marx, Karl. *Contribution to the Critique of Political Economy*. London: International Liberal Publishing Company, 1904.

Michaels, Robert. "Elites in Western Democracy." In *Elites in Western Democracy*, edited by Ivor Crewe. Vol. I of *British Political Sociological Book*. New York: John Wiley and Sons, 1974.

"Moneywatch for the Third Republic: A Question of Economic Viability." *The Guardian*. June 9, 1993.

Montesquieu, Charles de. *The Spirit of Laws*. New York: Hafner, 1949.

"More States are Coming." *Tell*. August 3, 1992.

- Mottoh-Migon, Vivian Roli. *Constitution Making in Post-Independence Nigeria: A Critique*. Ibadan, Nigeria: Spectrum Books Ltd., 1994.
- Ndujihe, Clifford. "The Changing Story of Women in Politics." *The Guardian*. August 5, 2004, 9-10.
- Nelson, Robert and Howard Wolpe. "Modernization and the Politics of Communism: A Theoretical Perspective." *American Political Science Review*, December 1970.
- New Nigeria*. November 2, 1977.
- New Nigeria*. November 11, 1977.
- New Nigeria*. April 15, 1993.
- Newswatch*. May 22, 1989.
- Newswatch*. October 26, 1992.
- Nigerian Standard*. October 8, 1976.
- Nigerian Tide*. December 13, 1992.
- Nigerian Tribune*. September 14, 1977.
- Nnoli, Okwudiba. *Ethnic Politics in Nigeria*. Enugu, Nigeria: Fourth Dimension Publishers, 1978.
- Nwankwo Arthur. *Thoughts on Nigeria*. Enugu, Nigeria: Fourth Dimension Publishers, 1986.
- Nwabueze, B. O. *The Presidential Constitution of Nigeria*. London: Hurst and Company, 1982.
- Nwabuko, Chukwusi. "Assemblymen Abandon Lawmaking for Impeachment." *Sunday Champion*. November 29, 1992.
- Nzongola-Ntalaja, Georges, Ed. *Conflict in the Horn of Africa*. Atlanta, Ga.: African Studies Association, 1991.
- Odumosu, Oluwole Idowu. *The Nigerian Constitution: History and Development*. Lagos, Nigeria: African University Press, 1963.
- Ogiansogben, Lawal. "NEC's Motion Struck Out in Kaduna." *Sunday Times*, June 27, 1993.
- Okechukwu, Okeke. "Local Government, Federalism and Representative Government." *Weekly Sunray*. June 27, 1993.

Obasanjo, Olusegun. *Constitution for National Integration and Development*. Lagos, Nigeria: Friends Foundation Publishers, 1989.

“Obasanjo Warning to Assembly Members.” *West Africa*. April 24, 1988.

“Onoh Wants Government Sacked.” *Daily Times*. November 28, 1992.

Ononiwu, Innocent. “Shock of the Decade: IBB for 8 Years Rule.” *Nigerian Economist*. December 7, 1992.

Ohwawa, Fred. “A Macrabre Drama.” *Newswatch*. February 15, 1993.

“Our Constitution.” *Sunday Champion*. November 15, 1992 .

Parenti, Michael. *Democracy for the Few*. London: St. Martins’s Press, 1983.

*Quality Magazine*. October 17, 1991.

*Report of the Commission Appointed to Enquire into the Fears of Minorities and the Dreams of Allaying Them*. London: HMSO, 1958.

*Report of the Constitution Review Committee*. Lagos, Nigeria: Federal Government Printers, 1988.

*Report of the Proceedings of the Constituent Assembly – 1988 - 1989*. Lagos, Nigeria: Government Printers, 1988 and 1989.

*Report of the Constitutional Conference 1994/1995, Volume II*. Abuja, Nigeria: The Conference, 1995.

Rikar, William H. “Federalism.” In Nelson Polspy and Fred Greenstein. Eds. *Governmental Institutions and Processes*. Boston, MA: Addison-Wesley, 1975.

Rustow, Dankwart A. *A World of Nations: Problems of Political Modernization*. Washington, DC: The Brookings Institute, 1967.

Saro-Wiwa, Ken. “The National Question – What is the Answer?” *Citizen*. December 4, 1992.

Savatori, Giovanni. “Concepts Misinformation in Comparative Politics.” *American Political Science Review*. LXIV, December 1970.

Schlesinger, Jr., Arthur M. *The Imperial Presidency*. Boston: Houghton Mifflin, 1973.

Sibley, Mulford Q. *Political Ideas and Ideologies: A History of Political Thought*. New York: Harper & Row, Publishers, Inc., 1970.

South-South Geo-Political Zone. *Where We Stand*. Port Harcourt, Nigeria: World Press, 2005.

Suberu, Rotimi T. *Ethnic Minority Conflicts and Governance in Nigera*. Ibadan Nigeria: Spectrum Book, 1996.

*Sunday Concord*. November 15, 1992.

Swisher, Carl. "The Supreme Court and the Forging of Federalism, 1789 – 1864." *Nebraska Law Review*. December 1960.

"The Rigging Game." *Tell*. August 3, 1992.

*Transition to Civil Rule*. Lagos, Nigeria: Government Printing Bureau, 1990.

"Transition 1993, Trouble Brews." *Citizen*. Jan. 4, 1993.

*TSM*. February 16, 1993.

*TSM*. March 7, 1993.

Ujoh, Emmanuel. "Assembly Clerks Decry 'Speakers' Impeachment." *Vanguard*. February 15, 1991.

Usman, Yusuf B. "The National Question." *Citizen*. December 4, 1992.

Viotti Paul R., and Mark V. Kauppi. *International Relations Theory: Realism, Pluralism, Globalism*. New York: Macmillan, 1987.

"Walk-out Protest over Sharia." *West Africa*. April 17, 1978.

"What about the Governments?" *National Concord*. November 30, 1992.

"What Manner of Justice?" *African Concord*, February 15, 1993.

Wheare, K. C. *Federal Government*. New York: Oxford: Galaxy-Bush, Oxford University Press, 1963.

Whiskey, Osifo. *Tell*. August 24, 1992.

Williams, Chancellor. *The Destruction of Black Civilization: The Great Issues of a Race from 4500 BC to 2000 AC*. Chicago: Third World Press, 1990.